The Solicitors' Journal

VOL. 91 — Saturday, April 5, 1947 — No. 12

CONTENTS

CURRENT TOPICS

Mr. Owen Bateson, K.C.

THE sad accident which cut off Mr. OWEN BATESON, K.C., in the prime of his life came, as VISCOUNT SIMON said in the House of Lords on the resumption of the hearing of an appeal in which Mr. Bateson had been engaged, as a shock and caused grief to all. " Mr. Bateson," Viscount Simon said, " deservedly enjoyed the best reputation in the courts where he practised, and we all felt that he was a man of great promise, with the prospect of a useful and successful future. Some of us have known him and his family many years, and we think of him not only for himself but because he was the son of a most accomplished and beloved father." He was the fourth son of the late Mr. Justice Bateson, and at the time of his death was only forty-six years of age. He was educated at Rugby and Wadham College, Oxford, called to the Bar in 1925 by the Middle Temple, and became a member of the Northern Circuit. His practice lay in the Admiralty Court, and in 1936 he was appointed Junior Counsel to the Admiralty in that court. He took silk in 1945.

Two New Lords of Appeal

LESS than a fortnight after the Appellate Jurisdiction Act, 1947, received the Royal Assent the elevation of LORD OAKSEY, L.J., and MORTON, L.J., to be Lords of Appeal in Ordinary has been announced, thus bringing the total number of Lords of Appeal up to the permitted maximum of nine. This strengthening of the two highest courts should do much to obviate the delays between setting down and hearing—estimated by the ATTORNEY-GENERAL at about six months in the case of the House of Lords and rather longer in the case of the Privy Council—which have been occasioned by the impossibility of both courts sitting at the same time. It is expected that with the occasional assistance of the LORD CHANCELLOR and others, notably Viscount SIMON, it will now prove possible for the House of Lords and the Judicial Committee to sit simultaneously, and even for the Judicial Committee to sit sometimes in two divisions. Lord Oaksey, L.J., and Morton, L.J., have been Lords Justices of Appeal since 1944, and the great work of the former as British President of the International Tribunal at Nuremberg is fresh in the minds of all.

The New Matrimonial Causes Rules

As we go to press, the long-awaited rules, giving effect to recommendations made in the Second Interim and Final Reports of the Committee on Procedure in Matrimonial Causes, are published (Matrimonial Causes Rules, 1947; S.R. & O., 1947, No. 523/L. 9, price 11d. net). The new rules revoke and consolidate with amendments the Matrimonial Causes Rules, 1944, and their amending rules, and effect a large number of important changes on which further comment must be reserved to our divorce contributor. The rules come into force on the 1st May, 1947, but as respects matrimonial causes and matters pending on that date are to have effect subject to such directions as the judge or registrar thinks fit to give in any particular case.

The Divorce Lists

SOLICITORS who engage in divorce practice in London have cause to be grateful both to the President of the Probate, Divorce and Admiralty Division and to the Clerk of the Rules for the facilities now provided for arranging dates, and even to some extent times, for the hearing of causes. They always find the greatest assistance and courtesy in the office of the Clerk of the Rules, in spite of the fact that there are few busier offices in the country. The new arrangements for posting at the end of the week the identification numbers of the cases to be taken on each day of the following week, and the separation of the day's list into morning and afternoon lists, have considerably eased the labours of solicitors in the preparation of their cases for trial. In their turn solicitors will wish to co-operate, and have their cases ready on the day, and morning or afternoon, for which they are fixed. In the vast majority of cases there is full co-operation, but in these days of shortness of staff, traffic delays and countless other hindrances, there are bound to be occasional lapses. The *Law Society's Gazette* for February notes that the Bar Council have earnestly requested counsel to reduce to the absolute minimum the number of their applications, especially those for morning causes to be taken in the afternoon. The Council of The Law Society make a parallel request to solicitors to " co-operate to the fullest possible extent in making a success of a scheme designed to meet everyone's convenience," and if they have any complaints about the working of it, it is suggested that they be addressed to the Secretary of The Law Society. If we may respectfully add a word of advice, it is that even if a case is at the bottom of the morning's list, it very often pays to be in court at 10.30 a.m., because the need for some counsel to attend more than one court in the course of the morning may allow cases at the bottom of the list to rise to the top.

Civil Judicial Statistics for 1945

THE short summary of the civil judicial statistics for 1945, published last month, reveals that the number of appeals to the House of Lords during the year was 28, as compared with 39 in 1944. Appeals set down in the Court of Appeal of the Supreme Court numbered 388, a decrease of 42 as compared with 1944. Of this number 142 were appeals from county courts. The total of appeals and special cases entered or filed in the High Court from inferior courts was 212, a decrease of 70 as compared with 1944. The total proceedings in the three divisions of the High Court showed an increase of 20 per cent., as compared with the preceding year, from 46,713 to 56,076. The proceedings in the Chancery Division increased by 117 to 4,026. In the King's Bench there was an increase of 2,331 to 25,583, and in Probate, Divorce and Admiralty an increase of 6,915 to 26,467. The number of matrimonial petitions filed during the year 1945 was 25,846, an increase of 6,760 over the preceding year. The number of petitions filed during the year for dissolution of marriage included 6,227 petitions for desertion, 1,065 petitions for cruelty, 283 petitions for lunacy, and 33 petitions for presumed decease. Application for leave to present a petition for divorce within three years of the date of the marriage was made in 73 cases and in 30 cases the petition was allowed. The total number of decrees *nisi* for dissolution of marriage was 18,982; 10,419 being on husbands' petitions and 8,563 on wives' petitions. Matrimonial causes to the number of 11,748 were tried at the Assize towns exercising this jurisdiction. The total number of poor persons proceedings increased by 395 to 5,598. Matrimonial causes formed 98 per cent. of the total, increasing by 386 to 5,275. Poor persons were successful in 96 per cent. of the causes tried to which they were parties. The number of proceedings commenced in county courts showed a decrease of 1·3 per cent., as compared with the preceding year, from 240,256 to 236,625. Of the actions for trial 38 per cent. (92,470) were determined without hearing or in defendant's absence. Of the actions determined on hearing 89 per cent. were determined before a judge and the remaining 11 per cent. before a registrar.

Deferment of Law Students

A NEW announcement is made in the *Law Society's Gazette* for February, 1947, concerning the deferment of men born in 1929 and later who intend to become solicitors and who would normally be called up for service in the Armed Forces on reaching the age of eighteen. The following arrangements have been agreed between the Council of The Law Society and the Ministry of Labour and National Service. A man born on or after 1st January, 1929, who obtains deferment to sit for the Higher Schools Certificate in 1947 and then obtains a place at a university for the ensuing session, and is deferred by a University Joint Recruiting Board, may be deferred to complete a three years' course of study in arts, law or science, subject to satisfactory progress. On completion of this university course he may obtain further deferment for the period required to complete service under articles, and not later than the first opportunity thereafter, to sit for the Final Examination of the Society. Application for this deferment in respect of service under articles (which must begin within three months after the expiration of university deferment) must be made on Form N.S. 294. Those born on or after 1st January, 1929, who do not take a degree may be deferred if they enter into articles before their eighteenth birthday or within three months after the termination of any deferment obtained to enable them to remain at school. They may also be deferred on the same conditions if they start a course before articles at a provided or approved Law School, in accordance with the regulations made under para. 7 of Sched. I to the Solicitors Act, 1932. In both cases deferment will cover the period required to complete service under articles and not later than the first opportunity thereafter to sit for the Final Examination of the Society. Articled clerks and those students who take the course before articles at The Law Society's School should make sure, if they wish to take advantage of these arrangements when registering under the National Service Acts, that they obtain the explanatory leaflet N.L. 11 and also Form N.S. 294.

The Power of the Law

IN the merest technical sense Sir ERNEST BARKER is a layman, but there can be no doubt that he commands at least as profound an understanding of the law and its problems as some of our best professional lawyers. Many of us, listening to Sir Ernest's recent broadcast on "The Power of the Law," or reading it in the *Listener* of 20th March, must have marvelled at his grasp of fundamentals as well as the luminosity and native force of his style. His theme was that all law comes from reasoning thought or, as St. John said: "In the beginning was the word," meaning *logos* or reasoning thought. This is true, as Sir Ernest said, whether the law results from Parliamentary discussion or a judicial decision, and he instanced *M'Alister (or Donoghue)* v. *Stevenson* [1932] A.C. 562 as an outstanding example of judge-made law, in which the common law liability of manufacturers to consumers was clarified and extended. What is of the utmost moment both to lawyers and to laymen is the question he put: "If law is the result of thinking . . . why isn't it more reasonable, more up to date, more consistent?" His answer should be memorised by every novice in law reform in and out of Parliament: "Time rolls on: one set of conclusions gets piled on another; and some of those at the bottom of the pile are pretty certain to be out of date, out-moded, and inconsistent with later conclusions. On the other hand, you cannot always be altering your old conclusions: it takes all your time to draw the new conclusions you need; and besides, there is a thing called security, in Bentham's sense of the word—which means knowing where you are, having the certainty of a known rule, being able to count on precedent, and all that sort of thing. If laws were always changing where would security be? . . . Is it enough to reform piecemeal, as you get the chance, or ought we to codify our law, as Jeremy Bentham preached; overhauling it all, and making it all at a stroke one consistent body of rational conclusions, all up to date? I can only answer that, being an Englishman, I should prefer to reform piecemeal. One thing at a time, and feel your way—those would be my own mottoes, as I think they are mottoes of most other Englishmen."

International Law Reports

THE first volume of a new series of Law Reports must always attract the interest of the legal profession. In Vol. I of the English Edition of "Law Reports of Trials of War Criminals," selected and prepared by the United Nations' War Crimes Commission, His Majesty's Stationery Office offers to the public at the moderate price of 2s. 6d. one of the greatest legal and historical documents of modern times. The present volume contains reports of six cases tried by British Military Courts and three cases tried by United States Military Commissions. In most of the cases the courts were constituted from serving officers of the British and United States Armies, and in two others Greek and Dutch officers were included. French cases will, according to Lord WRIGHT, who wrote a Foreword as Chairman of the United Nations War Crimes Commission, be included in later volumes. Lord Wright comments that several hundreds of cases of war crimes have already been tried in courts of different members of the United Nations, and the reports will provide a correct record and will illustrate important points of law and procedure. They have been prepared by Mr. Egon Schwelb, Dr. jur. (Prague), LL.B. (London), Legal Officer of the Commission, with the collaboration of Mr. Jerzy Litawski, LL.M. and LL.D. (Cracow), Legal Officer, and Mr. George Brand, LL.B. (London), Assistant Legal Officer. The ordinary form of English law reports has been followed, with short headnotes, except that the reasons for the decisions are to be gathered from the arguments in most of the cases. The full reports, when completed, will form a valuable contribution to international law and a stepping-stone to world peace.

TORTS AGAINST A SERVANT

To the general reader one of the most striking of legal fictions is undoubtedly that by which a seduced daughter is regarded, subject to certain conditions, as being in the service of her father for the purpose of enabling the father to maintain an action against the seducer on the ground that the latter has committed against the "servant" what would (were it not for the maxim *volenti non fit injuria*) constitute a tort, and has thereby deprived the "master" of her "services." The fictitious nature of the basis of the action is perhaps emphasised by the practice, which is well established, of awarding the father in suitable cases substantial damages for the hurt to his feelings, possibly aggravated on account of the conduct of the defendant. A recent case (*Mankin and another* v. *Scala Theadrome Co., Ltd.* [1946] 2 All E.R. 614) serves as a timely reminder that the fiction sometimes comes to life.

It is, of course, no impediment to an action for seduction if the relationship between the plaintiff and the girl seduced is not that of father and daughter but the purely factual one of master and servant, though the damages in that case are limited to expenses actually incurred (*McKenzie* v. *Hardinge* (1906), 23 T.L.R. 15).

Nor need the tort complained of be that of seduction. Salmond mentions also in this connection imprisonment and torts causing physical harm to the servant. According to a note by the learned editor of the All England Report of the recent decision, the earliest cases concerned assaults committed on the plaintiff's servant by the defendant. The modern cases seem to found largely on *Martinez* v. *Gerber* (1841), 3 M. & G. 88, which exemplifies a class of action of considerable practical importance to-day, that arising out of negligence on the highway. In that case it was sought to set up a distinction between cases where the remedy of the servant for the tort was an action in trespass as such, in which event the master's right to sue was admitted, and those where the appropriate action was one of trespass on the case. It was contended for the defendant that in the latter event the damage to the master was too remote, as being a "consequence upon a consequence." Tindal, C.J., rejected this contention and judgment was entered for the master.

Another distinction founded on the nature of the tort in question seems to have troubled Stable, J., in his judgment in the latest case. The facts there, so far as material, were that one music hall artist who was employed by another as a stage partner was injured by reason of a defect in a stage upon which he was dancing—a defect which, the learned judge found, would have been brought to the knowledge of the defendants by the exercise of reasonable care and skill on their part. This was essentially a wrong of omission and not a positive or intentional act. Stable, J., examined authorities which seemed to him to lay stress on the active nature of the wrongs which they held to be actionable at the suit of a master. In other words, they dealt with misfeasance and not mere non-feasance, and specifically referred to this fact. "It certainly seems remarkable," says the learned Judge ([1946] 2 All E.R., at p. 615) "that when an assistant is injured by an omission of someone else, and the person injured happens to be in the relation of servant to master, that omission, whatever it may be, provided it deprives the master of the services of the servant and would give an action to the servant, gives the master also a right of action. One is surprised, if that is the law, that the courts have not been inundated with cases of this kind during the years that have elapsed." Nevertheless, his lordship found himself unable to discover any principle which enabled him to draw a line between those wrongs which give a right of action to the master and those which do not. Taking the view that the law regards a master's right to the services of his servant as a species of property, and that interference with that right by any purely tortious act or omission which, if the servant were thereby injured, would give him a right of action, confers also a right of action on the master, Stable, J., held that the employer of the injured artist was entitled to recover against the defendants.

It is interesting to note that in the old case of *Taylor* v. *Neri* (1795), 1 Esp. 385, also referred to in the editorial note to the recent report cited, Eyre, C.B., appears to have non-suited a plaintiff pleading very similar facts because he thought that a person hired to sing, as was the employee in that case, was not a servant at all. The learned Chief Baron would apparently have limited the master's right of action to those cases involving a *domestic* servant.

In these days of bureaucratic expansion, practitioners are more than ever likely to run across cases similar to *A.-G.* v. *Valle-Jones* [1935] 2 K.B. 209, an interesting decision of MacKinnon, J., as he then was. In a road accident, two aircraftmen (the report, in its reference to "aircraftsmen," may be an unwitting source of annoyance to lawyers ex-R.A.F.) were injured by the negligence of the driver of the defendant's lorry. The proceedings were by way of information laid by the Attorney-General in respect of loss arising to His Majesty from being deprived of their services during the period of their consequential incapacity, and certain special damage. It was ultimately not disputed that the Crown had the same right of action as a subject in respect of the loss of the services of a servant by the tortious act of a third party. The real contest was fought on the question of damages.

According to Serjeant Manning's note to *Martinez* v. *Gerber* (3 M. & G., at p. 91 (*a*)), if the master retains the services of the injured servant, whether those services be gratuitous or paid for, the measure of damages is the same supposing he hires another servant to take the place of the injured one, does the work himself or even leaves it undone. But the more complicated facts in the later cases have necessitated a more detailed treatment of this important question. Stable, J., in *Mankin's* case, *supra*, thought that in each case the question was: "what was the direct consequence to the employer?" The consequences in the case before him had been (*a*) that for six weeks a modified stage turn had had to be put on, resulting in financial loss to the employer; (*b*) that for four weeks no turn at all had been possible, the loss for this period being correspondingly greater. Both these consequences were taken into account in the award of damages to the master. Of course, the employee recovered separately in respect of the salary he had lost. With regard to the period (*b*) the learned judge accepted the master's explanation that though he might have mitigated his damage by working alone for that period, the consequent harm to himself in his profession would have been such that he was to be regarded as relieved, in the circumstances, of the normal duty on a plaintiff to minimise the damage suffered.

Different again were the circumstances in *A.-G.* v. *Valle-Jones*, *supra*. MacKinnon, J., also emphasises that the damages must depend on the facts of the case. If a substitute is employed to do the work of the servant, the measure of general damages is the extra cost to the employer over and above what he would otherwise pay the injured servant. If no substitute is employed and the master continues to pay the injured servant then *prima facie* he can recover the wages thus paid for nothing. In the present case the Crown had employed no substitutes but had retained the services of the injured men, presumably spreading their duties, during their incapacity, over other members of the force. It had been contended that the Crown, having the right (on grounds of public policy, see *Dunn* v. *R.* [1896] 1 Q.B. 116) to dismiss its servants at pleasure, should have diminished its damage by dismissing the two aircraftmen in question when they became incapable of continuing to render the services for which they were engaged. But the learned Judge points out ([1935] 2 K.B., at p. 219) that if the Crown had so acted, the practical consequence would have been to increase the claims of the men themselves by the amount of the wages so lost. "I do not think it sound to suggest that it would have been reasonable for [the R.A.F. authorities] to take a course which would not have diminished by a penny the real and ultimate liability of the defendant, inasmuch as it would merely have transferred the claim . . . from His Majesty to the men

themselves." Judgment was accordingly entered for the Crown for the full amounts paid to the aircraftmen during their incapacity and for the special damage.

The considerations which arose this case appear to be especially important in cases involving employees of extensive organisations such as the services and large commercial concerns. The result substantially confirms Serjeant Manning's view expressed over a century ago.

TOWN AND COUNTRY PLANNING BILL—IV

It is now proposed to examine what provision is made by way of compensation or other redress to persons adversely affected by the Bill. This must be considered under five heads as follows :—

(1) Payments out of the fund of £300,000,000 allocated for payments for depreciation of land values (Pt. IV of the Bill).

(2) A right for an owner to oblige a local authority to purchase his land where it has become incapable of reasonably beneficial use as a result of a planning refusal or conditional consent (cl. 17).

(3) Compensation for refusal or conditional grant of planning permission in certain cases (cl. 18).

(4) Compensation for abortive expenditure and liabilities incurred when a planning permission is revoked or modified (cl. 22).

(5) Compensation where a conforming use or building is ordered to be discontinued, made subject to conditions, removed or altered (cl. 24).

1. The main source of depreciation of land values is cl. 10 (1) requiring permission for any development after the appointed day coupled with the need to pay a development charge therefor under Pt. IV. This in effect expropriates development rights, and no compensation will be forthcoming except under the above heads. As was indicated in the first article, the prospect of any owner's obtaining real satisfaction for loss of development value out of the £300,000,000 allocated in the Bill is remote. This is emphasised by the following quotations from the speech of the Chancellor of the Exchequer in winding up the second reading debate in the House of Commons : " We do not say that this figure, or any other figure, is to be justified as representing what the landlords are entitled to as of right, because we deny there is a legal right and we follow the Uthwatt Committee and the old common law of England in so denying . . . There is no logical method of calculating this thing. Therefore, we had to make a guess at what would be reasonable. My right hon. friend has made his guess; I think it is as good as anyone else's guess. He guesses that £300 millions would be just about enough to keep the wolf from the door in a number of cases of hardship, which in due course will be revealed."

The reader may evaluate from this and from his own knowledge of development values when compared with the sum of £300 millions, which it must be remembered covers Scotland as well as England and Wales, how much or how little an owner may be likely to receive. The details of the payments, which are dealt with in Pt. IV, are extremely vague. After development values have been ascertained the Treasury are to make a scheme for distribution of the English and Welsh share of the £300 millions, but, in so doing, may distribute to particular interests in land either by reference to development values or to such other circumstances as may be prescribed in the scheme (cl. 51 (3) and (4)), so that the development value may not in fact count at all.

Certain exceptional cases were dealt with in the first article of this series (91 Sol. J. 47) and the limited qualifications to entitle land to special treatment as land ripe for development (cl. 75) were indicated. In Committee on 26th March the Minister made an important announcement that special treatment would be afforded out of the sum of £300,000,000 to land which was not within this clause but was " near ripe." The details of this will be dealt with in the next article.

Claims for payment must be made to the Central Land Board within such time as may be prescribed by the Board (cl. 53 (1)), and may be in respect of the freehold or the interest of a tenant under a lease or underlease, or an agreement for a lease or underlease, but not under an option to take a lease or a mortgage (cll. 53 (3) and 107). Small claims are to be excluded (cl. 56) so that no payment will be made where—

(*a*) the development value of the interest when averaged over the area of the land does not exceed the rate of £20 per acre ; and

(*b*) the development value of the land does not also exceed one-tenth of its restricted value.

For the purpose of this part of the Bill an interest in land is deemed to be depreciated in value if the restricted value on the appointed day is less than the unrestricted value on that day, and the development value is the difference between these two values (cl. 54 (1)). The restricted value is the value calculated on the assumption that planning permission would be refused for any development except that specified in Sched. III. The unrestricted value is the value the land would have had on the appointed day if the Bill did not exist. Both values, although they relate to an interest as it subsists on the appointed day, are to be calculated by reference to prices current immediately before the 7th January, 1947, this date being specified to avoid any disturbance in prices caused by the subsequent publication of the Bill. It is worth while looking into Sched. III, because it is important not only for the purposes of Pt. IV, but also for the purposes of cl. 18 (which we discuss under head 2), cl. 47 relating to assessment of compensation on compulsory acquisition, and cl. 62, which relates to development charges. It bears the title " Classes of Development excepted from Payment of Development Charge," which as will have been seen is hardly a true indication of its importance, and sets out six classes of development, which are very briefly summarised as follows :—

(1) The rebuilding as often as may be required of any building existing on or within ten years before the appointed day, provided that the new building does not exceed by more than one-tenth the cubic content of the old.

(2) The enlargement, improvement or alteration as often as may be required of any building in the first class, the cubic content not being increased by more than one-tenth.

(3) The carrying out on land which was agricultural land on the appointed day of building or other operations for agricultural purposes not including dwelling-houses or market garden or nursery buildings.

(4) The use of a building used before the appointed day for a purpose in any general class specified in an order made by the Minister for any other purpose falling within the same general class.

(5) Where part of a building is used on the appointed day for a particular purpose, the use for that purpose of any additional part of the building not exceeding in cubic content one-tenth of the first part.

(6) Where land is being used on the appointed day for the deposit of waste material or refuse in connection with the working of minerals, the use for that purpose of any additional part of that land reasonably required.

Summarised briefly, the position in regard to the above classes of development is—

(*a*) they are excluded for the purpose of calculating any payment for depreciation under Pt. IV. This is because, although development permission is none the less required for them, special provision is made for compensation in cl. 18 if permission is refused (subject, however, to the important exception of Class 1), and on compulsory acquisition the owner will receive in the compensation such value as these classes of development may represent to his land unless he has already come under cl. 18 ;

(*b*) special compensation is provided by cl. 18 for all except Class 1, in the event of a refusal or conditional grant of a development permission ;

(*c*) in calculating compensation for compulsory acquisition it will be assumed that planning permission for any development in these classes would be granted unless, in the case of the classes other than Class 1, it has been refused or granted subject to conditions, when it will be assumed that any further applications for such development will be dealt with in the same way (cl. 47 (1)) ;

(*d*) No development charge is payable on the development taking place (cl. 62 (2)), except where compensation has been paid under cl. 18 and the development is subsequently permitted (cl. 62 (3)).

It is worth while noting specially here that if a planning authority refuse permission to rebuild a building coming within Class 1 the owner will not have received any payment for depreciation on this account, nor will he be entitled to compensation under cl. 18, except as hereinafter mentioned. His only remedy will be to try and avail himself of the provisions of cl. 17, in which case he may be able to recoup himself partly as, in assessing the compensation payable for acquisition, it will be assumed that permission for rebuilding under Class 1 would be granted (cl. 47 (1)). If, in accordance with the procedure which will be mentioned later, instead of confirming the purchase notice the Minister directs that some other development should be permitted which would make the land capable of reasonably beneficial use, the owner may claim compensation under cl. 18 for the difference in value of his interest, taking into account this permitted development, and the value of his interest if the rebuilding of the original building had been permitted (cl. 18 (3)), where the former is the lower. In effect, the local planning authority can enforce a change in the type of development if willing to pay compensation where the new development makes the property of less value than the old if continued by new buildings.

It is also worth noting that reference is made in all classes to the appointed day. Therefore, for instance, in the case of a building erected after the appointed day—otherwise than in substitution under Class 1 for a building then existing—requiring to be rebuilt, altered, enlarged or improved, no compensation under cl. 18 will be payable on a refusal or conditional permission, but a development charge will be payable if the development is permitted ; and the position will be similar if the building, though substituted for an existing building, was not substituted under Class 1, i.e., if it exceeded by more than one-tenth the cubic content of the original building. A very complicated situation in the future for a purchaser contemplating purchase of buildings, and one which should be inquired into before contract.

Before leaving Pt. IV, there are one or two matters of importance to be noted in cll. 57 and 58. The right to receive a payment for depreciation vests in the owner on the appointed day, and he is the person in whom the legal estate in the interest is vested or, if the interest is a tenancy under an agreement for a lease or underlease, the person who is entitled to have the legal term vested in him. By cl. 57 (3) the right to receive a payment or a part of a payment is made transmissible by assignment or by operation of law as personal property. Regulations may be made providing that an assignment shall be of no effect unless notice has been given to the Central Land Board. The Board's approval to the assignment is not, however, required. Where, therefore, a contract of sale is made after the appointed day, or before the appointed day, but is not due for completion until after such day, it should make provision for an express assignment to the purchaser of the payment if it is intended that he should receive it ; otherwise the vendor, assuming he was the owner on the appointed day, will remain entitled to it.

Payments will be satisfied by the issue of Government stock not later than five years after the appointed day, the amount to be such as, in the opinion of the Treasury, is of a value equal on the date of issue to the amount of the payment, having due regard to the market values of other Government securities existing on that date. Interest on the amount of any payment from the appointed day to payment at such rate as the Treasury may determine, shall be paid in cash by the Central Land Board at the time when the payment is satisfied (cl. 58). Consideration of the remaining four heads under which compensation may be obtainable must be deferred to the next article.

DIVORCE LAW AND PRACTICE

RECENT DECISION ON DESERTION

An interesting case came before Mr. Commissioner Eddy, K.C., in the undefended petition of *Walker* v. *Walker*, on 21st February (see the *Evening Standard* of that date, p. 5), which concerned the right of a husband to choose the matrimonial home, and which upheld his right even where this involved his wife's sharing a home with his mother.

The wife had alleged desertion on the ground that her husband had stayed away from the marital home which she had provided in London while he wanted her to live with his mother in his mother's home in the country. In his judgment, dismissing the petition and holding that the husband was not guilty of desertion, the learned Commissioner stated that it was for the husband, and not the wife, to decide where the home should be unless there was a binding contract to the contrary. As to the facts, he stated that the husband, who was a chief officer in the mercantile marine, was studying for his final certificate at the time and had to exercise economy, and that there was no spite in his request that his wife should share his mother's house ; that the wife, who was a secretary and assistant buyer at Acton, had already taken a flat in London and that she had an undue sense of her own independence and put her career before her obligations as a wife, and that she had therefore misconceived her legal rights.

This judgment raises two points : (A) as to the right of the husband to choose the matrimonial home, and (B) as to the wife's sharing such a home with her mother-in-law ; and it may be helpful to see what the law is on these matters.

(A) This question arose in *Mansey* v. *Mansey* [1940] P. 139, where Henn Collins, J., dealt with the matter in this way. The husband was petitioning for dissolution on the ground of desertion, and the wife put in an answer in denial, in which she charged the husband with deserting her. The dispute on this part of the case turned upon an allegation by the wife that she was entitled to dictate to the husband where he should live, she objecting to accommodation offered by him at a boarding-house, accommodation which it was common ground was in itself perfectly suitable, and which was found as a fact by the learned judge to be exceptionally good of its class. In disposing of the wife's cross-prayer by holding that if there had been desertion on the part of the husband it had been put an end to by his subsequent offer of alternative accommodation, which the wife was bound to accept, Henn Collins, J., says, at p. 140 : " The rights of a husband as they used to be have been considerably circumscribed in favour of the wife, without very much, if any, curtailment of his obligations, but we have not yet got to the point where the wife can decide where the matrimonial home is to be, and if the husband says he wants to live in such and such a place then, assuming always that he is not doing it to spite his wife and the accommodation is of a kind that you would expect a man in his position to occupy, the wife is under the necessity of sharing that home with him. If she will not, she is committing a matrimonial offence : she is deserting him."

This states the general position, but this case was distinguished in *King* v. *King* [1942] P. 1, in which the contractual element referred to above was considered. There, however, the facts were different in that it was agreed as a condition of the marriage by the husband at his wife's request to live after the marriage at her residence, a bungalow, where she

conducted a business which was her means of livelihood. In holding that the wife was not guilty of desertion by refusing a request by the husband to live with him at his former home in the neighbourhood to which he had removed himself, the President pointed out that there was no suggestion of any undertaking in connection with the marriage, which was the husband's second marriage, that he should make any permanent financial provision for his wife, and that she was left in complete ignorance whether he even intended to leave her anything under his will. In finding on the cross-claim by the wife for dissolution that the husband was guilty of desertion, he stated that, speaking generally, he did not in the least dissent from the pronouncement of Henn Collins, J., in *Mansey's* case, *supra*, that a husband has a right to say where the matrimonial home should be, but that he did not think that in the circumstances there before him the husband had the right for no valid reason whatsoever to go back on the understanding on which he had entered. With regard to the agreement as to the matrimonial home he held that this was not void as being contrary to public policy, and that it meant that for good reasons common to both sides the parties agreed *rebus sic stantibus* that the bungalow was the proper matrimonial home, and that it did not mean that the wife was entitled to dictate the matrimonial home if the good reasons on which the agreement was based ceased to exist, or if some changed circumstances gave good reason for a change in the matrimonial home.

Subject, therefore, to some agreement such as the one in this case, it would appear that the judgment in *Mansey's* case represents the legal position on this aspect of the relations between husband and wife.

(B) Where there is a conflict between a husband's duty to his wife and to his mother, it has been clearly laid down that his first duty is to his wife, and that if the presence of the wife's mother-in-law makes life intolerable to the wife, and she in consequence leaves the home, she is not guilty of desertion, and the husband is liable to maintain her. In *Millichamp* v. *Millichamp* (1931), 95 J.P. 207, there had been an agreement between the husband and wife before marriage that they should live with the husband's mother at her house after the marriage, and differences which had arisen between the wife and her mother-in-law resulted in the wife leaving the husband. In answer to a summons by her for wilful neglect to maintain her, the husband offered to take the wife back to his mother's house, which he said was the only home which he could afford to provide, but the justices made an order for maintenance. This decision was upheld by the Divisional Court, Lord Merrivale, P., stating that the husband's first duty was to his wife and was to provide a home according to his means, although this duty could be limited by such an arrangement with regard to the mother, and that the justices were right in coming to the conclusion that he had failed in this duty by putting his mother instead of his wife first.

This case, however, was distinguished by a case on the other side of the line, *Jackson* v. *Jackson* (1932), 48 T.L.R. 206, in which the magistrates had held that the husband's conduct in taking a house next to his mother's without consulting his wife, and in keeping control of the housekeeping and the purse, and other conditions imposed on her, were quite unbearable for her or for any wife, and they made a maintenance order against the husband. In allowing the appeal and discharging the order, Lord Merrivale stated that he was not able to say that the taking of the house next to the mother was necessarily a wrong if the husband did not put his wife under his mother's dominion, and he held that the wife had withdrawn from the house without sufficient cause. Lord Merrivale laid down this test: "is it right to say that the conditions imposed on the wife were unbearable for her or any other wife, conditions which it was not competent for a reasonable husband to set up? Were they such conditions that a reasonable wife, being so treated by an unreasonable husband, could not be expected to proceed with the conjugal life?"

It may be noted that in commenting upon *Millichamp's* case in *Grubb* v. *Grubb* (1934), 50 T.L.R. 221 (in which a case was remitted to the justices to consider whether or not a wife in whose favour a maintenance order had been made had made an offer to return to her husband at his mother's house, an offer which had been refused by him), Langton, J., stated that if the justices had believed that a genuine offer had been made by the wife there would have been good ground for the order which they had made, and that there was no broad principle laid down in *Millichamp's* case that a man was not entitled to prefer his mother to his wife.

The test referred to above was adopted and adapted by Lord Merriman in *Holborn* v. *Holborn* [1947] 1 All E.R. 32, although he stated that he must not be taken to say that those words were to be substituted for all other tests. This test was applied in upholding a finding by justices that a husband was guilty of wilful neglect to maintain his wife where he persisted in making sexual demands which were known to be regarded by her as inordinate or revolting, such persistent lack of consideration amounting to a course of conduct so grave and weighty as to justify the wife in withdrawing from cohabitation. In so doing the President pointed out that the facts in *Jackson's* case and the case then before him, although very different, had this in common, that there was nothing of a permanent or irrevocable character about the conduct which was complained of.

It would appear therefore that the test laid down by Lord Merrivale should be applied in considering on the facts of any particular case whether or not the sharing of a house with her mother-in-law amounted to such conditions as would justify a wife in withdrawing from the matrimonial home.

COMPANY LAW AND PRACTICE

MEETINGS

"WHENEVER a certain number are incorporated, a major part may do any corporate act; so if all are summoned and part appear, a major part of those that appear may do a corporate act." This was said by Lord Hardwicke in *A.-G.* v. *Davy* (1741), 2 Atk. 212, and the principle which he enunciated describes the situation in relation to common law corporations. It applies equally to the case of companies incorporated under any statute, except where the statute or the constitution of the company otherwise provides.

For example, by the Companies Act certain corporate acts require more than a simple majority, and in the case of those acts the principle requires to be modified to a certain extent. Equally, if the articles prescribe a quorum, a meeting at which less than a quorum attends will not be able to effect anything at all, and in such a case a further modification of the principle must be made in its application to statutory companies.

Clause 45 of Table A provides that no business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business, and, save as in the articles otherwise provided, three members personally present shall be a quorum. The following article provides in effect that if a quorum does not turn up at the advertised time for a meeting, the meeting, unless it was one convened on requisition, is to be adjourned for a week, and if there is then not a quorum present the members present shall be a quorum.

It not infrequently happens in companies where there is a small number of members that the number two is substituted for the number three in cl. 45 of Table A, but it should be recognised that doing so makes nonsense of cl. 46. If there is not at the adjourned meeting the quorum of two prescribed by cl. 45 so altered, the one member who is present (assuming that one turns up) will not constitute a meeting. The reason for this is concisely put by the judgment of Mellish, L.J., in *Sharp* v. *Dawes* (1876), 2 Q.B.D. 26, which is as follows: "In this case no doubt a meeting was duly summoned, but only one shareholder attended. It is clear that, according to

the ordinary use of the English language, a meeting could no more be constituted by one person than a meeting could have been constituted if no shareholder at all had attended. No business could be done at such a meeting and the case is invalid."

It is perhaps worth noticing that in *Re Fireproof Doors, Ltd.* [1916] 2 Ch. 142, in which case the question was raised whether a quorum of directors might be one, Astbury, J., said: "But though it is true that one shareholder cannot constitute a meeting—*Sharp* v. *Dawes*—it is not clear that one director cannot form a quorum of a board of two." He was, however, in that case assisted in so thinking by the fact that the articles contained a power of delegation by the directors to a committee of one.

One other point on cl. 46 of Table A is that unless the articles expressly so provide it will not apply to meetings of a class of shareholders. In *Hemans* v. *Hotchkiss Ordnance Co.* [1899] 1 Ch. 115, the company had an article in form similar to cl. 45 of Table A, and the variation of rights article provided that agreements modifying the rights of a particular class of shareholders had to be confirmed by an extraordinary resolution passed at a separate general meeting of those shareholders. It went on in the usual way: "All the provisions hereinafter contained as to general meetings shall *mutatis mutandis* apply to every such meeting, but so that the quorum thereof shall be members holding or representing three-fourths of the nominal amount of the issued shares of that class."

Notwithstanding this provision it was held by the Court of Appeal as a matter of construction that the quorum of three-fourths was equally necessary at any adjourned meeting as it was at the original meeting of the class.

Another difference between meetings of a class and meetings of the company is to be found in the rule referred to above that one person cannot constitute a meeting of the company; this is not the rule in respect to meetings of a class, as is shown by the case of *East* v. *Bennett Brothers, Ltd.* [1911] 1 Ch. 163.

In that case the company had issued preference and ordinary shares and the memorandum and articles provided that no new shares should be issued to rank equally with or in priority to those preference shares, unless such issue was sanctioned by an extraordinary resolution of the holders of the preference shares present at a separate meeting of such holders specially summoned for the purpose.

After incorporation the company desired to issue further preference shares ranking equally with the original preference shares, and to enable such a course to be followed the sole holder of the original preference shares signed in the minute book of the company a document whereby he recorded his consent to the proposed issue of preference shares.

The new preference shares were issued and it was subsequently argued that, no meeting ever having been held of the holders of the original preference shares, they had not been issued in accordance with the memorandum and articles of the company and were consequently invalid. In his judgment Warrington, J., pointed out that there was no difficulty about a quorum, and went on: "In an ordinary case I think it is quite clear that a meeting must consist of more than one person," and he referred to *Sharp* v. *Dawes*, *supra*, and another case. He pointed out, however, that in *Sharp* v. *Dawes*, Lord Coleridge, C.J., in his judgment had said: "The word 'meeting' *prima facie* means a coming together of more than one person. It is, of course, possible to show that the word 'meeting' has a different meaning from the ordinary meaning, but there is nothing here to show this to be the case." Warrington, J., then said what he had to consider was whether or not the case before him was one in which it was possible to show that the word "meeting" had a meaning different from its ordinary meaning. For that he held he was entitled to see what was the object of the provision in the memorandum of association. That object was that it should be necessary to obtain and record in a formal manner the consent of the preference shareholders before anything was done affecting their rights.

He also inferred that the persons who framed the memorandum must be taken to have had in their minds the possibility that the preference shares might fall into the hands of one person, there being nothing to prevent that in the constitution of the company. He therefore thought that in this case the word "meeting" could not have been used in its ordinary sense and that the shares had therefore been properly issued. He further pointed out that there was no difficulty about treating the formally expressed assent of the preference shareholder as a resolution. The only difficulty was created by the use of the word "meeting."

The result of these two cases about meetings is then that in the ordinary way meetings of a company must consist of at least two persons, though this is not necessary for meetings of a class. There remains, however, one question that is possibly open to doubt. By s. 1 of the Companies Act any two or more persons may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of the Act, form an incorporated company. The Act further provides that if a private company carries on business with less than two members, the person who is a member while the company so carries on business may in certain circumstances become personally liable for the debts of the company.

There is thus nothing in the Act expressly to prohibit in the case of a private company one member holding all the preference shares and one member holding all the ordinary shares. If, in addition to this, the preference shareholders were not under the articles entitled to attend meetings of the company, it might prove impossible even to hold a meeting of the company. It is possible that, there being nothing in the Act to prohibit such an arrangement, the court might conceivably hold that in such circumstances the word "meeting" in the Companies Act was not to be given its ordinary significance; but in view of the decision in *Sharp* v. *Dawes* such a result is unlikely, and it will always be the prudent course to ensure that there are at least two persons who are entitled to attend and vote at meetings of a private company and seven such persons in the case of a public company.

A CONVEYANCER'S DIARY

THE LAW OF PROPERTY ACT, SECTION 40 (1)—II

A CORRESPONDENT writes as follows:—

"I should be interested if the writer of the article on L.P.A., s. 40 (1) [91 SOL. J. 125], would comment on the following:—

Draft contract was sent to purchaser's solicitors in the usual way. They replied, 'Thank you for your letter of the . . . enclosing draft contract, which we return approved. We are having copy signed by the purchaser.' After being informed that vendor's solicitors were ready to exchange contracts and being subsequently pressed, the purchaser's solicitors eventually wrote that their client was not proceeding with the matter.

In the particular case it was not necessary, as it happened, to pursue the matter, but I have often wondered whether the purchaser's solicitors had fallen into the trap. Was their letter with the accompanying draft contract setting out the full terms of the agreement previously come to by the parties, a sufficient memorandum? Or was the reference to signature by the purchaser a sufficient 'escape clause'?

I have often wondered . . . and the article has made me wonder again."

Before I could express a final opinion on this point, I should want to know something more of the previous history of the matter. Everything depends on whether the parties, previous to the correspondence between their solicitors, had entered into a concluded contract, and one which was unenforceable only by reason of the absence of a memorandum satisfying

the requirements of the statute, or whether they had only come to terms " subject to contract." In the latter event, it appears to be clear that nothing done by one party (or his agent) alone can make an enforceable contract, since the consensus with intent to create a contract is itself lacking. If the exact expression " subject to contract " was not used, it will be a matter of inference from all the evidence whether or not the necessary consensus existed. On the other hand, even if the parties originally made their arrangements " subject to contract," it would still be possible to show a subsequent consensus overriding the original arrangements. But if the inference to be drawn by the court is that the arrangements had originally been, and, at the date of the letters, still were " subject to contract," then the letters cannot affect the matter.

If, however, the court came to the conclusion that at the date of the letters there was an existing contract, unenforceable through the absence of a memorandum but otherwise binding, then, in my opinion, the purchaser's solicitors did sign a memorandum which made the contract enforceable as against their client. Thus, in *Horner* v. *Walker* [1923] 2 Ch. 218, a prospective lessor successfully sued a prospective lessee for specific performance in very similar circumstances. An oral agreement having been made, the lessor's solicitor sent the lessee a draft lease. This draft was agreed between the two sets of solicitors and they arranged that the lessee's solicitors should engross both lease and counterpart. The engrossments having been made, the lessee's solicitors wrote to the lessor's solicitor saying : " We enclose engrossment of lease so that you can obtain the signature of [the lessor] thereto. We have written to [the lessee] and expect to be in a position to exchange parts at an early date." By the mistake of an office boy, the counterpart was sent to the lessor and the lease to the lessee ; the lessor's solicitor having discovered the mistake made the exchange by messenger, the lessee himself having the lease by that time. I do not think that anything turns on this muddle, as both documents contained all the terms, and they differed only in the necessary formal ways. Astbury, J., having stated the facts, and that the only question was whether the lessee's solicitors' letter was a sufficient memorandum, said : " In my opinion the letter . . . purporting to enclose the engrossment of the lease to the lessor's solicitor, coupled with that engrossment which was subsequently delivered by the lessee in person to the lessor's solicitor's messenger in order to obtain the lessor's signature thereto, constitutes a sufficient memorandum of that oral contract." Evidently the result would have been the same if the right enclosure had actually accompanied the letter, and, of course, the fact that the document was the engrossment of a lease and not an approved draft of a contract makes no difference. The same point arose in a slightly different form in *Phillips* v. *Butler* [1945] Ch. 358, where, after the hammer had fallen at an auction, the auctioneer wrote out and signed a memorandum in the usual form on the back of the particulars. It was then found that the purchaser had forgotten his cheque book and the auctioneer agreed that he should send a cheque for the deposit by post, and retained the memorandum meanwhile. By the time the cheque arrived, the vendor had purported to cancel the auctioneer's authority to contract with the purchaser. The vendor was, however, compelled specifically to perform the contract. An oral contract was made by the fall of the hammer, and it was within the auctioneer's authority to sign the document which he did sign. That he signed it, in view of the difficulty about the deposit, as an escrow for delivery when the deposit arrived, and not as a contract, did not invalidate it as a memorandum. There is no difference of substance between this case and one where the document signed was a letter enclosing or referring to another document (such as a draft contract) containing all the agreed terms.

Another reported example of the doctrine that a valid memorandum may be the inadvertent consequence of the execution by an agent of a document which, as a document, he was authorised to execute is to be found in *Grindell* v. *Bass* [1920] 2 Ch. 487. The plaintiff sued Mrs. Bass for specific performance. Her defence was that she had already sold the property to one Earle. The contract with Earle was adequately stated in para. 4 of her defence, which, of course, was signed by her counsel. The plaintiff then joined Earle as a co-defendant, and Earle delivered a defence relying on the earlier agreement with him, and counter-claimed for a declaration that he was entitled to the property, free from all interest of the plaintiff. As against Earle, the plaintiff relied on the Statute of Frauds. But Russell, J., held that para. 4 of the defence of Mrs. Bass was a sufficient memorandum. In doing so, he expressed himself to be applying the principle of *Daniels* v. *Trefusis* [1914] 1 Ch. 788, and stated, in terms, that since counsel was authorised to sign the defence, it did not matter that he did not mean to bring a memorandum into being. The remarkable thing about the case, however, was that the memorandum relied on against the plaintiff in Earle's favour was the pleading of the defendant (by which one would hardly expect a plaintiff to be bound), and, moreover, it was delivered before Earle was a party to the action at all. It thus appears, both from *Grindell* v. *Bass* and *Phillips* v. *Butler*, that, apart from documents inadmissible owing to professional privilege or the title, a plaintiff can rely on a document as a memorandum without its ever being communicated to him by the defendant.

Though it appears from *Thirkell* v. *Cambi* [1919] 2 K.B. 590 that a solicitor's letter repudiating the alleged contract may be outside the doctrine of *Daniels* v. *Trefusis*, the other cases mentioned above go a very long way. In the absence of the expression " subject to contract," therefore, a solicitor will be well advised to walk warily in corresponding about or approving a draft contract, if there is any chance that his client will want to escape from becoming effectively bound.

LANDLORD AND TENANT NOTEBOOK

STATUTORY NUISANCES

THE point decided in *Betts* v. *Penge U.D.C.* [1942] 2 K.B. 154, namely, that the words " any premises in such a state as to be prejudicial to health or a nuisance " in the Public Health Act, 1936, s. 92 (1) (*a*), were applicable to a house in such a state as to interfere with the personal comfort of its occupants, was of great importance to landlords. The full facts of the case, an appeal against a conviction under s. 94 of the statute, were somewhat out of the ordinary. The appellant had given a tenant of his notice to quit ; she owed rent at the time, but retained possession, making no payments ; after nearly three months had elapsed he removed window-sashes and the door, and the local authority, presumably having served an " abatement " notice which was disregarded, took proceedings though unable to prove that anyone's health had been injured. The local bench convicted the appellant and the Divisional Court upheld them. But, apart from the question whether discomfort is covered by the words cited, there was no argument about the liability of the person charged. The findings of facts on which the case was stated included the following : that he was the landlord of the flat ; that he had not issued any summons for recovery of possession ; that he had made no application for leave to distrain. None of these was referred to in the judgments, and it may be of interest to examine whether, and if so to what extent, they were relevant.

The Public Health Act, 1936, s. 92 (1), sets out a number of " matters " and enacts that they may be dealt with summarily as " statutory nuisances." In s. 93 the local authority are directed to serve an abatement notice on " the person by whose act, default or sufferance the nuisance arises or continues," *or*, if that person cannot be found, on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the nuisance and to execute such works and take such steps as may be necessary for that

purpose. Two provisos follow: (*a*) where the nuisance arises from a defect of a structural character, the notice *shall* be served on the owner of the premises; and (*b*) where the person causing the nuisance cannot be found *and* it is clear that the nuisance does not arise or continue by the act, default or sufferance of the owner or occupier of the premises, the local authority may themselves do forthwith what they consider necessary, etc. Sanctions appear in s. 94: "If the person *on whom* an abatement notice has been served makes default in complying with any of the requirements of the notice" are its opening words, and it goes on to provide for nuisance orders to be made by magistrates' courts.

Now in *Betts* v. *Penge U.D.C.* the facts, other than those describing the legal relationship between the appellant and the occupier of the flat, would be sufficient to bring the former well within the first words of s. 93, those before the word "or." It was clear that the nuisance, if any, arose through his act. Ownership, however, became important because of the first proviso; the alleged nuisance arising from a defect of a structural character, only the owner could be served with an abatement notice. The question that suggests itself, then, is whether, in order to prove a case under s. 94, in circumstances in which the defect complained of is of a structural character, the complainant has to establish that the nuisance in fact arose or continues by the act, default or sufferance of the defendant; or is proviso (*a*) designed to ensure that once there is a structural defect causing premises to be in a state prejudicial to health or a nuisance, and an abatement notice has been served on the owner and not complied with, the owner is guilty of an offence?

The difficulty is due to the facts that while s. 92 creates or defines statutory nuisances, it contains no machinery for remedying them; s. 93, which provides for abatement notices and mentions "act, default or sufferance," is not concerned with enforcement; s. 94, which is, merely demands that an abatement notice shall have been served. It is no doubt the case that the defendant in proceedings under s. 94 is entitled to query whether the notice ought to have been served and whether it ought to have been served on him; but the phrasing of s. 93 suggests that an owner of premises is to be held liable for nuisances due to structural defects, whether or not such are due to his act, default or sufferance. The only occasion when the conduct of the owner appears to be relevant is when neither he nor anyone else is to blame, and some third party has caused the trouble, so that proviso (*b*) allows the authority to remedy the nuisance itself. And this still leaves the authority without an answer, as far as the Public Health Act, 1936, is concerned, to a problem illustrated by an incident described in a recent publication entitled "John Citizen and the Law": a citizen called at the Town Hall to inquire who was his landlord, was asked to whom he paid rent, stated that he had been in the house a long time without paying any, but added that if someone did not repair his roof soon there was going to be a row!

The suggested interpretation of the provisions making the landlord responsible under the Act of 1936 whether there be any act or default on his part or not is borne out by the decision in *Turley* v. *King* (1944), 60 T.L.R. 197. The facts were that two houses owned by the respondent were damaged by enemy action. They were occupied by weekly tenants, the respondent being responsible for repairs. Dampness having resulted from the damage, the appellant, the local sanitary inspector, served an abatement notice under s. 93 and ultimately took out a summons under s. 94 alleging the existence of a statutory nuisance as defined by s. 92. The local justices dismissed the complaint on the ground that liability to repair was excused by the Landlord and Tenant (War Damage) Act, 1939, s. 1 (1). The Divisional Court held that the obligation imposed by the Public Health Act, 1936, was not affected by that Act. The justices had been wrong in thinking that the relief as between landlord and tenant "had anything to do with the duty of the owner of property, *or anybody else*, not to commit a statutory nuisance on his property, or not to abate a statutory nuisance existing on it when called upon to do so."

Though the above case was fought on the question whether emergency legislation excused statutory nuisance, the language used suggests strongly that what might be called moral culpability of a landlord is not an essential ingredient in an offence against the Act of 1936, s. 92. It so happens that in *Betts* v. *Penge U.D.C.* the landlord had done the damage himself, and that in *Turley* v. *King* he was contractually liable for repairs; but the authorities appear to warrant the proposition that the landlord must abate any nuisance arising from a defect of structural character, whether that defect arises by his act, default or sufferance or not.

It does not, of course, follow that the landlord has no remedy over against the tenant *if* the tenancy agreement can and does make the tenant responsible, or if the defect can be ascribed to actionable waste. The Public Health Act, 1936, unlike the Housing Act, 1936, does not expressly save such remedies (see s. 19 (2) of the latter), but neither does it make them unenforceable. *Betts* v. *Penge U.D.C.*, then, has emphasised the advisability of inserting proper repairing covenants where it is intended that the landlord shall not ultimately be responsible for repairs.

TO-DAY AND YESTERDAY

March 31.—At Leicester, on 31st March, 1732, William Warner, who had been transported for deer stealing, was hanged for returning. He "was executed on the same gibbet on which one, Harris, had been hanged in chains about a year and a half since for the murder of the father of the above William Warner. A pardon being offered and £50 reward for discovering the murderer, he impeached Harris and gave evidence that himself hired him to do the murder."

April 1.—On 1st April, 1802, the future Lord Campbell wrote to his father: "I now with perfect knowledge of the subject can declare that, if I could maintain myself creditably for a few years, I should have a very fair chance to rise at the English Bar . . . The times are very bad, but still I hope to get into some way in which I may make £150 or £200 a year by working privately in my chambers. I should then reckon myself an independent man . . . Then shall you hear of speeches which I make . . . Many conquests shall I make among the women, and much envy shall I excite among the men. The hour of my being called to the Bar is eagerly expected, and every litigant in Westminster Hall is then eager to become my client!"

April 2.—There is a curious Chancery order of 2nd April, 1618, made by Bacon as Lord Chancellor: "And for that the labour and pain to be taken in casting up of accompts is, and must of necessity be, very variable and uncertain, by reason of the variety of parcels, broken and undigested numbers, promiscuous confusion of commodities of trading, the variety of weights and measures . . . the rising and falling of the exchange of money and many other . . . circumstances . . . so as, if any certain fee should be set down beforehand, the same cannot be . . . proportionable to the labours . . . of the said auditors . . . but will either exceed due proportion to the prejudice and grievance of the suitor or else fall short thereof to the wrong and discouragement of the auditor, who will thereby grow the more remiss; in order that due proportion may be kept . . . and that the Lord Chancellor . . . may not be . . . withdrawn from his more weighty occasions by reason of allowing or disallowing the said fees, his lordship now directs that henceforth any one of the Masters in Chancery do assess the same."

April 3.—On 3rd April, 1776, Dr. Johnson dined at the Mitre with Boswell, who had appeared in the House of Lords as counsel in a case arising out of a dispute over the Douglas estate and who brought with him the Solicitor-General from Scotland, Murray, afterwards a judge with the title of Lord Henderland. During the evening the question arose whether the law should give redress for defamation of a man's deceased relative. Murray thought it should, but Johnson said: "Sir, it is of so much more consequence that the truth should be told than that individuals should not be made uneasy, that it is much better that the law does not restrain writing freely concerning the character of the dead. Damages will be given to a man who is calumniated in his lifetime, because he may be hurt in his worldly interest . . . but the law does not regard that uneasiness which a man

feels on having his ancestor calumniated . . . Let him deny what is said, and let the matter have a fair chance by discussion."

April 4.—On 4th April, 1766, John Thompkinson, of the Light Horse, was hanged at Kennington Common for highway robbery.

April 5.—" Adolphus and Ellis," " Ellis and Blackburn," and " Ellis and Ellis," are familiar law reports. Thomas Flower Ellis was a brilliant Cambridge scholar, and a member of Lincoln's Inn. He early won a large practice. He became Attorney-General for the Duchy of Lancaster and Recorder of Leeds. He was an intimate friend of Macaulay, whom he met on the Northern Circuit. He died in London at his house, No. 15, Bedford Place, on 5th April, 1861, and is now remembered only as a law reporter.

April 6.—William Melmoth, who died on 6th April, 1743, and was buried under Lincoln's Inn Chapel, was a Bencher there and an eminent advocate in his day. With Peere Williams he edited " Vernon's Reports " but he was best remembered for his work on " The Great Importance of a Religious Life," composed on Sundays in intervals snatched from his duties. It was an amplification of the theme : " Man was made for happiness ; belief promises this ; therefore belief is best." It won great success.

DAUGHTERS OF EVE

In dealing with a recent case of abduction, at the Winchester Assizes, Mr. Justice Macnaghten observed : " Since the days when Adam put the blame on Eve I don't suppose there has been a case of a man of thirty-six saying a girl of seventeen carried him off." Without doubting that in this instance the learned judge's rejection of that particular defence was well justified, one may doubt whether it would be proper to be universally sceptical. We know from another case, which was being tried at the same time at the Manchester Assizes, that some women remain " wholly unsophisticated " at forty-eight and more, and capable of writing verses like :—

" Dearest, how I miss you,
Through the busy day,
Longing for you, thinking of you,
When you're far away."

On the other hand it has been known for a precocious little female of just over twelve to write the following letter : " My dearest John, You have no idea of the joy with which I received your letter. You asked me to say one word. I think it will be ' yes.' And you asked me to fix the day and way of escape. I shall say next Thursday week . . . Bella will leave the front door off the catch. I am to leave it open to set our tyrant off her guard and then to slip down the street, but I shall leave you to fix the place we will meet, but at all events it must be retired. You need not have any misgiving in laying open your heart before me. You might have been sure I should be only too happy at your doing so . . . And now, dearest John, when you write to Bella send something for me and say if you accord to my arrangements. And now, with kindest and truest love, believe me, ever your affectionate, sincere and true Annie." In poise and literary style, how is that for a schoolgirl of 1854 ? I venture to think she could have carried off any man of any age she pleased.

ELOPEMENT

And now here are the characters in this charming romance : Miss Annie Ward, aged twelve years and three months, handsome, an heiress, a pupil at Miss Jemima Bishop's boarding school at Appleby, in Westmorland ; Mr. John Atkinson, aged twenty-three years, a most respectable young man, organist at the parish church, former music master at the school, whose services had been dispensed with, when his attentions to Miss Annie Ward were observed ; Bella, maid at the school, who carried the letters between the lovers. Well, Annie got her elopement. She slipped out of the house by night and the couple made a dash by road for the Border and, between seven and eight in the morning, they were married in the Scottish fashion at the Sark toll-bar. Returning to England, they unwisely took to the railway and walked straight into the arms of the police at Carlisle. John was duly tried at the Assizes for abduction and his counsel boldly maintained that it was a case of true love on both sides. He was condemned to nine months' imprisonment but it was clear that he meant to claim his young bride when he was released. One hopes they lived happily ever after.

COUNTY COURT LETTER

Valid Refusal of Work

IN *Schlesinger* v. *Austin Motor Co., Ltd.*, at Birmingham County Court, the claim was for £9 7s. 6d., as two weeks' wages due. The plaintiff was a German Jewish refugee, and his case was that he had been employed by the defendants as a capstan operator until March, 1944, when he was stopped by reason of an eye injury, not sustained at work. The plaintiff was not released from employment under the Essential Works Order, and in August, 1945, he was fit for light work. The defendants offered him work as a labourer, loading scrap iron, but this was too heavy. The plaintiff also refused work as a cleaner. On the 7th August the plaintiff was told to go home, and on the 21st August he obtained his release under the Essential Works Order. He claimed wages for the fortnight, but the defendants' case was that he had unreasonably refused work as a lavatory attendant. A person in the plaintiff's position was not entitled to dictate what work he should do, in order to earn the most money. His Honour Judge Dale agreed with the latter proposition, but held that work as a lavatory attendant was not work which the plaintiff was bound to accept. The plaintiff had contracted to do suitable light work in relation to his skill as a metal sorter. He was available for work within the meaning of the Essential Works Order, and could not reasonably be required to do the work offered. Judgment was given for the plaintiff, with costs on the higher scale, in view of the difficult and novel point of law involved.

Loss of Goods in Transit

IN *Wait* v. *Runlaken Magneto Co., Ltd.*, at Melton Mowbray County Court, the claim was for £14 19s. 6d., as the value of a dynamo. The plaintiff's case was that he sent the dynamo to Manchester by train. It was packed in a strong wooden box, and was signed for as having been received " in good order." The defendants' case was that a temporary employee had signed the receipt. All they had was a damaged box—a bundle of firewood tied with string. They took this to be a returned empty, as it contained no dynamo. His Honour Judge Field, K.C., held that the defendants were bound by their employee's signature, viz., " in good order." Judgment was given for the plaintiff, with costs.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber and a stamped addressed envelope.

Modern Conveyance to Two in Fee Simple—EFFECT

Q. A conveys freehold estate to C and D in fee simple. The conveyance does not state whether C and D hold as joint tenants or tenants in common, and there is no express power to mortgage. Under what conditions do C and D hold the property, and have they power to mortgage or lease as absolute owners ?

A. C and D hold as joint tenants at law upon trust for sale, the trusts of the proceeds of sale and of the rents and profits pending sale being for themselves as joint tenants (Law of Property Act, 1925, s. 36). A conveyance to two *simpliciter* has always created a joint tenancy (Dart on Vendors and Purchasers, 8th ed., p. 813 *et seq.*). As C and D are both trustees and sole beneficiaries they can effect any transaction they like. Technically they would as beneficiaries authorise themselves as trustees to effect the desired transaction.

Tenant's Family

Q. I act for the landlord of a controlled house, the tenant of which has recently died. The executors for the tenant have terminated their liability in respect of the tenancy, and a niece of the deceased tenant is now claiming a statutory tenancy. My query concerns the definition of the words " tenant's family " in the Rent Acts. I have referred to Blundell's Rent Restrictions Guide, 2nd ed., p. 55, and the word " family " includes, as well as wife and children, the tenant's husband, brothers and sisters, and, it would seem, the grandchildren, nephews and nieces who lived with the tenant. My view, however, is that in the case in question, where the person who is claiming a statutory tenancy is a niece of the deceased, i.e., a descendant of the deceased's sister, the degree of relationship is too far removed to be included. Possibly you can refer me to any decisions which might reverse my opinion.

A. There is an unreported decision of Talbot, J., at Herts Assizes on 22nd February, 1932, that " member of the family " includes a niece by blood. (See " Rent, etc., Restrictions," by the editors of *Law Notes* (19th ed.), at p. 193.)

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Limitation (Enemies and War Prisoners) Act, 1945

Sir,—The learned author of "A Conveyancer's Diary," 91 SOL. J. 110, has a broad practical solution for the hindrances and inconveniences that might arise under this Act. But does he give sufficient weight to two material facts ?

(i) That the number of potential enemy and prisoner-of-war disseisees, for the protection of whom the Act was passed, exceeds by many times the number of possible dispossessed persons under usual disability ;

(ii) That disability under the Act is transient : infants and those of unsound mind are always with us.

Nulla lex satis commoda omnibus est.

THEODORE B. F. RUOFF.

Hampstead, N.W.3.

The Conveyancer writes : "I hope that the broad scheme which I suggested will protect all prisoners of war and enemies who were actual disseisees and who have taken steps to enforce their rights with reasonable expedition. At the same time, I am not sure that I understand the point as to the disability being transient. It is a question of law whether a purchaser can inquire into the possibility of suspension or not. What really troubles me is that, if such inquiries are admissible at all, they can be made in every case where a title by time is claimed, thus throwing this part of the law into confusion."

Non-Professional Advocates

Sir,—It seems to me high time that some apparent distinction be made between solicitor advocates and the host of non-professional advocates who appear at petty sessions and various tribunals and inquiries, a host which I note has so increased in the past eight years as often to outnumber solicitors at police courts.

One remedy I suggest is that solicitors always appear in gowns before magistrates, tribunals and inquiries. Pending the issue of a similar distinction by officialdom, this would give us some small difference from their myrmidons.

Ramsey, Huntingdon. A. L. PRICE.

REVIEWS

The New Law of Education. By Miss M. M. WELLS, M.A., of Gray's Inn, Barrister-at-Law, and P. S. TAYLOR, M.A., Chief Education Officer, County Borough of Reading. Second Edition. 1947. London : Butterworth & Co. (Publishers), Ltd. 21s. net.

The first edition of this book dealt with the Education Act, 1944, and the present edition has been rendered necessary by the passing of the Education Act, 1946. The latter is an amending Act, although it does not effect any substantial change in the administrative provisions of the 1944 Act. Parts III and IV of the present edition are new. Part III gives the text of all Statutory Rules and Orders of general application made by the Minister of Education, and in force on 31st July, 1946. Part IV gives a selection of circulars and memoranda issued by the Ministry of Education since its inception. Users of the first edition will find that the present edition is written on familiar lines, and that it maintains the high standard achieved by the original work.

Maxwell on Interpretation of Statutes. Ninth Edition. By Sir GILBERT H. B. JACKSON, late Puisne Judge of the High Court at Madras. 1946. London : Sweet & Maxwell, Ltd. 42s. net.

"Maxwell" is, of course, the classical textbook on a subject whose importance increases with the growing bulk of our legislation. Sir Gilbert Jackson is to be congratulated upon having brought out another edition of the work which he last edited in 1937. There is little need to deal in detail with this admirable work in which learning and style go together with an astonishing volume of miscellaneous information. Reading the section on literal construction, it is easy to understand why civil servants feel impelled to do their utmost to render statutes and rules "judge proof." It is fortunate that the judges have seldom shrunk from imputing to the Legislature the literal meaning of the words used, even though the results may sometimes seem fantastic. The alternative would be for the court to speculate on what was the unexpressed intention of the Legislature, from which it would be but a short step to the Nazi doctrine that statutes must be ideologically interpreted. This rule is indeed one of the most important in our jurisprudence, and we must hope that Parliament will insist that the enactments now being passed shall so far as possible remain within the cognizance of the courts, where they will receive construction on principles which can scarcely be guaranteed where the interpreter is an officer of the executive government.

Jackson & Gosset's Investigation of Title. Fifth Edition. By EDMOND H. BODKIN, B.A., of Lincoln's Inn, Barrister-at-Law. 1946. London : Stevens & Sons, Ltd. 42s. net.

A new edition of "Jackson & Gossett" is indeed an event, the previous one having appeared as long ago as 1922. The new edition contains much valuable information, classified alphabetically. The introductory chapter is not greatly changed from earlier editions, and reminds the reader of the points to be looked for in investigating title. It is, in our view, quite admirable. But the effect of the main body of the work is not so satisfying. Perhaps that is inevitable in a book whose scheme necessarily prevents a really exhaustive treatment even of the major matters. There also seem to be a certain number of inaccuracies to which attention should be directed on a future occasion. For example, on p. 202 there appears the statement that the law relating to the limitation of actions, previous to the former Real Property Limitation Acts, is not now of practical importance in the investigation of title, "nor are these Acts themselves of importance, since rights of action not barred for the date when the Limitation Act, 1939 (which repeals them), came into force, are subject in all respects to the new law." In fact a high proportion of the cases arising in practice on this subject still depend upon the Real Property Limitation Acts, since interests extinguished by those Acts before the 1st July, 1940, remain extinguished, but are still well within a thirty years' title. On p. 338, the third requisition in regard to tenants in common appears to contemplate that, where the legal estate was vested in trustees on the 31st December, 1925, it might be dealt with under the transitional provision relating to settled land, and not under that which deals with legal estates vested in trustees. But this proposition is in contradiction to the rule laid down by Clauson, J., in *Re Dawson* [1928] Ch. 421. Incidentally, since a high proportion of the difficulties which now arise on titles are caused by the transitional provisions relating to tenancy in common, it would have been desirable to devote to this subject more than two and a half pages in a book whose text is 399 pages. In the chapter on war damage, it seems a pity that no reference is made to the difficulties of proving title to a value payment in the event of the value payment and the legal estate having become separated, as often happens. There is no warning that an owner of both such interests who is selling the land should make sure that he gets an acknowledgment of his right to production of the deeds from the purchaser. Finally, it is not very satisfactory to deal with "covenants" of all kinds in a single short title, and this title might reasonably have contained some discussion of the extent to which the existence of restrictive covenants is a blot on title justifying the purchaser in refusing to proceed.

BOOKS RECEIVED

Law of Property in Land. By H. GIBSON RIVINGTON, M.A., Solicitor. Third Edition. 1946. pp. xxiv and (with Index) 556. London : Law Notes Publishing Offices. 25s. net.

Statute Law Relating to Employment. By F. N. BALL, LL.B., Solicitor. Second Edition. 1946. pp. xii and (with Index) 278. London : Thames Bank Publishing Co., Ltd., and Stevens & Sons, Ltd. 25s. net.

The Law Relating to Assents. By W. J. WILLIAMS, B.A., of Lincoln's Inn, Barrister-at-Law. 1947. pp. xix, 138 and (Index) 5. London : Butterworth & Co. (Publishers), Ltd. 15s. net.

Fisher and Lightwood's Law of Mortgage. Supplement to Seventh Edition. By Miss M. M. WELLS, of Gray's Inn, Barrister-at-Law. 1947. pp. xv and 50. London : Butterworth and Co. (Publishers), Ltd. 7s. 6d. net.

"Law Notes" Year Book, 1947. By the Editors of "Law Notes." 1947. pp. xxiv and (with Index) 135. London : Law Notes Publishing Offices. 7s. 6d. net.

"Oyez" Practice Notes, No. 2 : Registration of Business Names. 1947. pp. 62. London : The Solicitors' Law Stationery Society, Ltd. 3s. 6d. net.

Phillips' Probate and Estate Duty Practice. First Supplement to Fourth Edition. By E. A. PHILLIPS, LL.B. 1947. pp. 35. London : The Solicitors' Law Stationery Society, Ltd. 2s. 6d. net.

NOTES OF CASES

KING'S BENCH DIVISION AND COURT OF APPEAL

Franklin and Others *v.* Minister of Town and Country Planning

Henn Collins, J. 20th February, 1947

Oaksey, Morton and Tucker, L.JJ. 24th March, 1947

Town and country planning—Designation of site for new town—Objection—Duties of Minister—New Towns Act, 1946 (9 & 10 *Geo.* 6, *c.* 68), *s.* 1 (1).

Appeal from a decision of Henn Collins, J., allowing an appeal under the New Towns Act, 1946.

On 11th November, 1946, the Minister of Town and Country Planning, acting under s. 1 (1) of the New Towns Act, 1946, made an order designating as the site of a proposed new town an area of some 6,100 acres situated partly in the urban district of Stevenage. Certain residents of Stevenage who had objected to the proposed order appealed to Henn Collins, J., on the grounds that the Minister had not acted within his powers in making the order and that he had failed to give objectors to the proposed order fair and proper consideration in his quasi-judicial capacity. One of the objections raised related to water supply and sewage disposal. The Minister admitted that the difficulties connected with those matters had not yet been met when he made the order. By s. 1 (1) of the New Towns Act, 1946: "If the Minister is satisfied . . . that it is expedient in the national interest that any area of land should be developed as a new town . . . he may make an order designating that area as the site of the proposed new town." By para. 3 of Sched. I to the Act "If any objection is duly made to the proposed order . . . the Minister shall, before making the order, cause a public local inquiry to be held with respect thereto . . ." (*Cur. adv. vult.*)

HENN COLLINS, J., after holding that para. 3 of Sched. I did not, on its true construction, make the Minister's proposed order itself the subject of the public local inquiry, since the word "thereto" related only to the word "objection," the words "to the proposed order" being inserted merely in order to identify the objection to which the inquiry was to be directed, so that the Minister was not under any duty at the inquiry to call evidence in support of the order, said that the question whether under s. 1 (1) of the Act the Minister had merely to be satisfied in his own mind, and not necessarily on reasonable grounds, required a conspectus of the legislation concerned. In the Act of 1946 there were substantially the same provisions for the making and hearing of objections as in a number of other statutes lending no colour to the suggestion that the powers of the Minister concerned were arbitrary. To hold that his powers were arbitrary here would reduce the provisions for objections, public local inquiry, report and consideration, to an absurdity, because the Minister could disregard the proceedings and do as he pleased. The Attorney-General had argued that that was indeed the position and that the sole use of the liberty to make objection was that the objectors might "blow off steam" and so rally public opinion to which alone the Minister might bow. No doubt, to act fairly in a matter about which one had, before considering objections, formed and expressed a view, required a firm mind and enough moral courage to say one was mistaken. But were those qualities out of the reach of a Minister of the Crown? The last question was whether the Minister had fulfilled his obligation to bring to bear on the controversy between himself, as Minister, and the objectors, as complainants of his administration, a mind open to conviction. To judge by his public speech before the Bill became the Act of 1946, any issue raised by objectors was forejudged. But the objector must show that the Minister had not an open mind from the inception of the public inquiry. He (his lordship) rejected the contention that it was enough if the Minister acted judicially in considering the objections and that in the critical moment of decision he was purely an administrator. The Minister, as was only to be expected of him, had dealt, in writing, with the substance of the objections, with the exception of that directed to the difficulties of water supply and sewage disposal—difficulties which must obviously be met before the scheme could go forward. The Minister acknowledged that they had not been met, and that he was taking advice about how it could be done. It did not follow that any way would be found. And yet, with that fundamental problem still outstanding, he had confirmed his order. The objectors had therefore satisfied him (his lordship) that from and after the inception of the inquiry the Minister had not had an open mind. He (his lordship) was convinced that the Minister had not decided with an open mind whether or not to confirm his order, but had meant to confirm it whatever the force of the objections, trusting that some solution would be found. That involved a denial of natural justice, and the order must accordingly be quashed.

The Minister appealed. (*Cur. adv. vult.*)

OAKSEY, L.J., giving judgment, discussing the allegation that the Minister was biased, said that his speech made at Stevenage before the New Towns Act, 1946, was passed, was taken by the objectors as showing that he and the Government had already made up their minds that Stevenage was to be one of the new towns. It was argued that the Minister had approached the question of Stevenage with a closed mind, never having lost the attitude of mind shown by that speech, and that he had by such bias deprived himself of any jurisdiction to act further in the matter, no purge of the bias being possible at any rate while he remained the Minister of Town and Country Planning. Henn Collins, J., had based his finding of bias in the Minister on the objections relating to water supply and sewage disposal. He (his lordship) considered the evidence on those matters, which was before the Court of Appeal but had not been before Henn Collins, J., and said that the only objection of the Metropolitan Water Board was really that of expense. It was never suggested that the matter of water supply presented an impracticable project. The Minister had stated in an affidavit that he had carefully considered all the objections made in the report of his official who conducted the inquiry, and the information collected for him by the Ministry, and that he had consulted with all the local authorities concerned. Notwithstanding that he had made that affidavit, and that the applicants were charging him with bias and with not having fairly considered the matters which he had to consider, no application was made to cross-examine him, which would have been the fair way in which to deal with such an allegation. Henn Collins, J., had been right in holding that the onus was on the objectors to show that the Minister had not had an open mind when he made the order. Even assuming that the Minister had been biased when he made his speech at Stevenage, it was still necessary to show that that state of mind continued until he made the order. In his (his lordship's) opinion, the evidence with regard to sewage disposal and water supply, the way in which the matter was dealt with at the inquiry, and the letter which the Minister wrote before he made the order afforded no evidence whatever of bias. It was clear that when a site for a new town was designated all the problems raised by the establishment of such a new town could not be gone into and decided in detail. If there had been evidence before the Minister that arrangements for sewage disposal and water supply were absolutely impracticable, Henn Collins, J's, judgment might have been right; but that was not the evidence before the inspector who held the inquiry. On the construction of the Act of 1946 he (his lordship) agreed with Henn Collins, J., in rejecting the argument that the public local inquiry held at Stevenage was not as prescribed by that Act because no representative of the Minister had been present, no witnesses had been called on his behalf, and no case in support of the designation of Stevenage as the site for a new town had been put forward. There was, he said, no obligation on the inspector holding the inquiry to insist on having the case in favour of the order put forward. The only obligation on the Minister after the inquiry had been held was fairly and in good faith to consider the report of the official who held it. He (his lordship) expressed no opinion on the policy of the Act. That was not a matter for the court. The evidence relied on by Henn Collins, J., was in his (Oaksey, L.J.'s) opinion no evidence of bias, in view of the affidavit of the Minister as to what he had considered and of his letter written in November, 1946, setting out the considerations which led him to make the order. Consequently the objectors, as applicants under the Act, had not discharged the onus lying on them of showing that the Minister was biased when he made the order. The appeal would be allowed.

MORTON and TUCKER, L.JJ., gave judgment agreeing.

Leave to appeal to the House of Lords was given.

COUNSEL: *The Attorney-General* (Sir Hartley Shawcross, K.C.) and *H. L. Parker*, for the Minister; *Capewell*, K.C., and *Squibb*, for the objectors.

SOLICITORS: *Treasury Solicitor; Sharpe, Pritchard & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

Phillips *v.* Long

Lord Goddard, C.J., Humphreys and Lewis, JJ.

10th December, 1946

Landlord and tenant—Small tenements—Claim for possession—Rent and rates exceeding £20 a year—Jurisdiction—Small Tenements Recovery Act, 1838 (1 & 2 *Vict. c.* 74), *s.* 1.

Case stated by a stipendiary magistrate at Bradford.

The landlord of a small tenement at Bradford claimed before the magistrate possession of the tenement under the Small Tenements Recovery Act, 1838, on the ground that the tenant was in arrear with her rent. The tenant had been in occupation for some years at a weekly rent of 4s. 8d., and, as occupier, had been liable to pay the rates. Under a resolution passed by Bradford Corporation under s. 11 of the Rating and Valuation Act, 1925, the landlord, as owner, became liable to pay the rates to the corporation, but was entitled under s. 11 (9) to be reimbursed by the tenant. The weekly sum payable for rent and rates by the tenant to the landlord accordingly amounted to 7s. 10d., representing an annual sum in excess of £20, the limit of the jurisdiction of courts of summary jurisdiction under the Act of 1838. The magistrate held that the weekly rent of the tenement within the meaning of s. 1 of the Act of 1838 was 7s. 10d., and therefore dismissed the application on the ground of lack of jurisdiction. The landlord appealed.

LORD GODDARD, C.J., said that the magistrate's decision that the 3s. 2d. per week payable by the tenant to the landlord in respect of rates was " rent " was wrong. The landlord's right to reimburse himself for the rates which he had paid was a quite different right from that of collecting money as rent. There was, for example, no power in the landlord to levy distress for the rates. The rent remained at 4s. 8d. a week, which amounted to less than £20 a year. The magistrate, therefore, had jurisdiction to hear the application, and the case must be remitted to him with a direction to that effect. There was no connection between the present case and one where the contractual amount to be paid was a lump sum made up by including the rates.

COUNSEL: *Quass.* The tenant did not appear and was not represented.

SOLICITORS: *Johnson, Weatherall & Sturt*, for *J. R. Phillips and Co.*, Bradford.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Rudler *v.* Franks

Lord Goddard, C.J., Humphreys and Lewis, JJ.
24th January, 1947

Landlord and tenant—Rent restriction—Application of Acts to Crown property in hands of lessee.

Case stated by Wiltshire Justices.

The appellant landlord was a farmer of land which he held on lease from the Commissioners of Crown Lands. He sub-let the house to the respondent sub-tenant at 5s. a week and applied to the justices for possession under the Small Tenements Recovery Act, 1838. The justices refused to issue a warrant for possession, holding that the Rent Restriction Acts protected the sub-tenant notwithstanding that the Acts did not bind the Crown, for the sub-tenancy had not been created by the Crown. The landlord appealed.

LORD GODDARD, C.J., said that it must be a surprise to anyone to hear that the Rent Restriction Acts did not apply to a house so long as it was Crown property, notwithstanding that it had been sub-let by the tenant of the Crown. So far as that court was concerned, the case was concluded by *Clark* v. *Downes* (1931), 145 L.T. 20, which must be taken to have been approved by the Court of Appeal in *Wirral Estates, Ltd.* v. *Shaw* [1932] 2 K.B. 247. That case decided that the Rent Restriction Acts applied *in rem* and not *in personam*. That meant that the Rent Restriction Acts attached or applied to the property itself, and that, therefore, as the Crown was not bound by those Acts, the house, so long as it remained Crown property, never became affected by the Acts. If the lease had been granted by the Crown, it could not have been disputed that the Acts would not apply, for, the Crown not being named in the Acts, obviously, on all the well-known rules of construction, the Crown was not affected by them. The reason why the Acts did not apply when the tenant of the Crown created a sub-tenancy was, first, because they operated *in rem*, and, secondly, because the Crown's rights would or might be affected, since, if it sold the reversion, it would probably obtain a lower price if the Acts applied because the purchaser would not be able to have vacant possession. The court was not limiting its judgment to cases where the Crown was still the owner of the property, for it seemed clear from *Wirral Estates, Ltd.* v. *Shaw, supra*, that, although the Crown might sell a property, its immunity from the Acts would last so long as a tenancy granted by the Crown remained in existence. The case could not be distinguished from *Clark* v. *Downes, supra*. The justices' decision must be set aside and a warrant must issue.

HUMPHREYS and LEWIS, JJ., agreed.

COUNSEL: *Molony* for the landlord. The sub-tenant did not appear.

SOLICITORS: *Darley, Cumberland & Co.*, for *Wansbroughs, Robinson, Taylor & Taylor*, Devizes.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.

COURT OF CRIMINAL APPEAL

R. *v.* Rowland

Lord Goddard, C.J., Humphreys and Lewis, JJ.
17th February, 1947

Criminal law—Conviction of murder—Subsequent confession to same murder by different man—Appellant's application to call him as additional witness.

Appeal from conviction.

After the appellant's conviction before Sellers, J., at Manchester Assizes of murder, one Ware made a statement confessing to the murder of which the appellant had been convicted. On this appeal, leave was sought to call certain witnesses whose evidence had not been available at the trial and also the man Ware. On 10th February, the court heard additional witnesses, refused to hear Ware, and announced that the appeal would be dismissed. They now gave their reasons for taking that course.

HUMPHREYS, J., reading the judgment of the court, said that such a statement as that by Ware, who would have had free access to the daily newspapers, called for the most careful investigation. The reason of the court for refusing the application to hear his evidence was that they were satisfied that that court was not the proper tribunal to hold such an inquiry. It was no light matter to reverse the finding of a jury who had convicted a person of murder after a trial extending over five days in which twenty-eight witnesses were called. It was obvious that the mere statement of a person such as Ware that the convicted man was innocent because he himself was guilty, even if made on oath, would not justify the quashing of the conviction of that other person, but would only be the beginning of an inquiry which would involve, in the light of the new evidence, the recalling of many witnesses and probably the calling of several fresh ones. Such an inquiry would be of a totally different character from the simple issue involved in the calling of a fresh witness to speak to some fact connected with the defence put forward at the trial. If the court had allowed Ware to give evidence, and he had persisted in his confession of guilt, the court would have been compelled to form some conclusion as to his guilt or innocence and to express that opinion in open court. In effect, therefore, the court would have been engaged in trying not only the appellant but also Ware, thereby usurping the functions of a jury. It was true that they would not be empowered to pronounce finally on the issue of the guilt or innocence of Ware, but, as a result of their judgment, he might have to stand his trial by a jury on a charge of murder. In that event the finding of that court could not fail to be prejudicial to his chance of an impartial trial. That court had, in truth, no power to try any one on any charge. It was not a tribunal of fact but a Court of Appeal constituted by statute to examine the proceedings of inferior courts in certain cases of conviction on indictment. They had no power even to direct a new trial by a jury; much less had they the right to conduct one themselves. The attitude of the court towards hearing fresh evidence had often been stated, for instance, in *R.* v. *Mason* ((1923), 17 Cr. App. R. 160). Here the court found no exceptional circumstances. On the hearing of the appeal they were not referred to, and were not themselves aware of, any precedent for granting an application such as the present. Finally, they were not unmindful of the fact that there existed an authority in the person of the Home Secretary, who had far wider powers than those possessed by that court, who was not bound, as they were, by rules of evidence, and who had all the necessary machinery for conducting such an inquiry as was asked for there. They found no legal grounds for interfering with the verdict of the jury, and accordingly dismissed the appeal.

COUNSEL: *Kenneth Burke* and *H. Openshaw*; *Nield*, K.C., and *Wingate-Saul*.

SOLICITORS: *T. H. Hinchcliffe & Son*, Manchester; *Director of Public Prosecutions*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.

Mr. EVAN LLOYD JONES, of Bangor, has been appointed Coroner for North Caernarvonshire. He was admitted in 1930 and was appointed Acting Coroner for North Caernarvonshire in 1941.

PARLIAMENTARY NEWS

ROYAL ASSENT

The following Bills received the Royal Assent on Thursday, 27th March, 1947 :—

AIR NAVIGATION.
CONSOLIDATED FUND (No. 1).
DOG RACECOURSE BETTING (TEMPORARY PROVISIONS).
FORESTRY.
POLISH RESETTLEMENT.

HOUSE OF LORDS

Read First Time :—

ACQUISITION OF LAND (AUTHORIZATION PROCEDURE) (SCOTLAND) BILL [H.L.] [26th March.

To re-enact in the form in which they apply to Scotland the provisions of the Land Acquisition (Authorization Procedure) Act, 1946.

ARMY AND AIR FORCE (ANNUAL) BILL [H.C.] [27th March.

EDUCATION (EXEMPTIONS) (SCOTLAND) BILL [H.L.] [26th March.

To make temporary provisions for the exemption of children from attendance at school to enable their employment in in-gathering the potato crop.

Read Third Time :—

CIVIC RESTAURANTS BILL [H.C.] [24th March.

In Committee :—

COMPANIES BILL [H.L.] [25th March.
PENICILLIN BILL [H.L.] [25th March.

HOUSE OF COMMONS

Read First Time :—

FORTH ROAD BRIDGE ORDER CONFIRMATION BILL [H.C.] [26th March.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to the Forth Road Bridge.

Read Second Time :—

FIRE SERVICES BILL [H.C.] [27th March.

QUESTIONS TO MINISTERS

NAVAL SUPPLY OFFICERS (LEGAL TRAINING)

Commander NOBLE asked the Parliamentary Secretary to the Admiralty whether he has any information to give about the new legal branch of the Royal Navy.

Mr. DUGDALE : The duties of Officiating Deputy Judge Advocate at Naval courts martial and of Clerk of the Court at disciplinary courts are carried out by the officers of the Supply and Secretariat Branch, who receive legal instruction in the course of their ordinary training to qualify them for these duties. The growing complexity of the criminal law, not only as regards procedure, but also as regards the technical and involved nature of the offences which may be committed has immeasurably increased the difficulties of courts martial and of the officers who advise the courts. The Admiralty have accordingly carefully examined what measures might best be taken to relieve the burdens which are being thrown on these officers. After the fullest consideration, it has been decided that a separate legal branch is impracticable, and ill-adapted to conditions of service in the Navy, and that the best results will be obtained by giving a fuller legal training to a number of officers of the Supply and Secretariat Branch.

We have decided that a small number of these officers shall be selected for training at public expense with a view to qualifying as barristers. Arrangements have been made with the Honourable Society of the Middle Temple for the admission of selected officers, who will normally pursue their training during a period of three years while holding suitable shore appointments. After qualification, these officers will gain practical experience by spending six months as pupils in the chambers of practising barristers. On re-appointment for naval duties, they will be employed in their normal capacity where their special qualifications will be of greatest value, and it is contemplated that in due course there will be one such officer in each of the major commands. In addition, a number of more junior supply officers will spend one month in the office of the Deputy Judge Advocate of the Fleet (who is himself a supply officer qualified as a barrister), and a further four to five months as pupils in chambers. [26th March.

SPECIAL JURIES (PROPOSED ABOLITION)

Mr. DRIBERG asked the Attorney-General whether a decision has yet been made to abolish special juries.

The ATTORNEY-GENERAL : The Government have now decided that, in principle, with the exception of the City of London special jury in commercial causes, special juries should be abolished. I cannot, however, promise when legislation will be introduced for this purpose.

Mr. HOGG : Does the right hon. and learned gentleman appreciate that, whatever may be the theoretical advantages or disadvantages of special juries, they have in fact afforded a convenient method of doing justice in cases which could not otherwise be so well tried ? Will the right hon. and learned gentleman at least undertake that no legislation will be introduced until something as good is put in their place ?

The ATTORNEY-GENERAL : I cannot agree with the assumption of the hon. gentleman. This survival of the fifteenth century has long since outlived its utility. The Government are fully satisfied that the common jury, whose competence to try criminal cases even of the gravest kind is not in doubt, is at least equally capable of trying civil matters.

Mr. HOGG : Does the right hon. and learned gentleman realise that the Government's decision will be treated by the populace at large as having been inspired by the unsatisfactory result of a particular trial with which they disagreed ?

The ATTORNEY-GENERAL : The suggestion is unworthy of the hon. gentleman. He gives me the opportunity of saying that my noble friend and I had this matter under active consideration from the middle of last year. [27th March.

JUSTICES (POLITICAL AGENTS)

Mr. BOWLES asked the Attorney-General if he will inform the House in detail why a justice of the peace has to resign on being appointed a full-time political agent.

The ATTORNEY-GENERAL : I am informed by my noble friend, the Lord Chancellor, that it has been the settled practice of successive Lord Chancellors of all political parties to refuse, knowingly at any rate, to appoint as justices, in the area of their activities, whole-time paid political agents, on the ground that in practice their appointment to the Bench was undesirable and might cause great embarrassment if they had to adjudicate in the case of either a prominent supporter or opponent, and that in accordance with the same general principles a justice on being appointed a whole-time paid political agent should resign from the Commission. I may add that it is understood that the Royal Commission on Justices of the Peace have this question under consideration, and pending the publication of the Commission's report the Lord Chancellor does not propose to make any change in his practice in the matter. [27th March.

JUSTICES (QUESTIONNAIRE)

Sir W. SMITHERS asked the Secretary of State for the Home Department by what authority D.L.G. 373 has been sent to all justices of the peace ; and what penalties are incurred if a justice of the peace refuses to complete and return the questionnaire.

Mr. EDE : I understand that the hon. member is referring to a letter sent by the chairman of the Royal Commission on Justices of the Peace to all justices of the peace asking for their co-operation in the work of the inquiry by filling in and returning to the Commission a form of questions the replies to which will be tabulated for statistical purposes required by the Commission. There is no question of penalising justices who do not complete and return the questionnaire, but it is hoped that all justices will be willing to give their assistance to the Commission in its work by furnishing the particulars requested. [27th March.

IDENTITY CARDS

Lieut.-Colonel LIPTON asked the Minister of Health whether he contemplates the issue of a revised identity card to include particulars of the holder's marriage.

Mr. J. EDWARDS : No, sir. This would involve verification of the marital status of the entire adult population and additional administrative machinery to keep the information on the identity card up to date.

Lieut.-Colonel LIPTON : Is my hon. friend aware that this suggestion would make bigamy less prevalent and would obviate much hardship to many innocent people ?

Mr. EDWARDS : I am aware of that, but legislation would first be required, and the administrative machinery, would, I think, be quite impossible. [27th March.

FURNISHED ROOMS (REQUISITION)

Mr. W. J. BROWN asked the Minister of Health to what extent he has delegated to local authorities the power to make a requisitioning order in respect of furnished accommodation when notice has been given that the tenant will be evicted at the expiration of the three months' protective period granted

following a reduction of rent by a rent tribunal; and whether he will make this delegation general and inform all local authorities of the fact.

Mr. J. EDWARDS: My right hon. friend has delegated authority to requisition in twenty-five cases. He is not prepared to make a general delegation but will sympathetically consider applications made in individual cases. [27th March.

REQUISITIONED HOUSES (REPAIRS)

Mr. MANNING asked the Minister of Health if he is aware that his Department have recently imposed a financial limit of £20 as the maximum amount of repairs or maintenance work which a local authority may carry out to requisitioned property without prior approval from his Department; that under present conditions local authorities find, in the majority of cases, expenditure in excess of this sum is involved and there is, therefore, an unnecessary delay in reletting properties; and if he will consider leaving the amount of maintenance repairs to requisitioned property to the discretion of the local authorities and increasing the financial limit.

Mr. J. EDWARDS: My right hon. friend has this under consideration and hopes to make an announcement shortly. [27th March.

RULES AND ORDERS

S.R. & O., 1947, No. 492/L.5

BANKRUPTCY, ENGLAND. GENERAL RULES

THE BANKRUPTCY (SHORTHAND WRITERS FEES) RULES, 1947
DATED MARCH 17, 1947

I, William Allen Viscount Jowitt, Lord High Chancellor of Great Britain, with the concurrence of the President of the Board of Trade, and in exercise of the powers conferred on me by Section 132 of the Bankruptcy Act, 1914,* and of all other powers enabling me in this behalf, hereby make the following Rules:—

1. Rule 67 of the Bankruptcy Rules, 1915,† (prescribing the fees payable to shorthand writers) shall be revoked and the following Rule shall be substituted therefor:—

"67. If the Court shall in any case, and at any stage in the proceedings, be of opinion that it would be desirable that a person (other than the person before whom the examination is taken) should be appointed to take down the evidence of the debtor, or of any witness examined at any public sitting or private meeting under the Act, in shorthand or otherwise, it shall be competent for the Court to make such appointment; and every person so appointed shall be paid a sum not exceeding 2 guineas a day and where the Court appoints a shorthand writer a sum not exceeding 1s. per folio of 72 words for any transcript of the evidence that may be required, and such fees shall be paid by the party at whose instance the appointment was made, or out of the estate, as may be directed by the Court."

2. These Rules may be cited as the Bankruptcy (Shorthand Writers Fees) Rules, 1947.

Dated the 17th day of March, 1947.

Jowitt, C.

I concur, *R. Stafford Cripps*,
President of the Board of Trade.

* 4 & 5 Geo. 5, c. 59. † S.R. & O., 1914 (No. 1824) I, p. 41.

S.R. & O., 1947, No. 486/L.4.

SUPREME COURT, ENGLAND. PROCEDURE

THE RULES OF THE SUPREME COURT (No. 2) 1947
DATED MARCH 18, 1947

I, William Allen Viscount Jowitt, Lord High Chancellor of Great Britain, in exercise of the powers conferred on me by Section 1 of the Administration of Justice (Emergency Provisions) Act, 1939,* and of all other powers enabling me in this behalf, and with concurrence of two other Judges of the Supreme Court, do hereby make the following Rules under Section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925†:—

1. The following Rule shall be added to Order XVII (which relates to change of parties by death etc.) and shall stand as Rule 7B.

"7B. [*Proceedings pending by or against the Coal Commission to be continued in the name of the National Coal Board.*]—Any action, matter or proceeding pending by or against the Coal Commission in respect of any right or obligation outstanding on the 1st day of January, 1947, or on such later date as such right or obligation became vested in or was transferred to the National Coal Board pursuant to the Coal Industry Nationalisation Act, 1946,‡ shall, as from the 1st day of January, 1947, or such later date as aforesaid, be continued by or against or in the matter of and in the name of the National Coal Board, and all further proceedings in such action, matter or proceeding shall, without any application or order, be continued as if the National Coal Board were named in the title thereof or as party thereto in lieu of the Coal Commission."

2. Part VI of Order LVB (which relates to proceedings in the King's Bench Division under the Housing Act, 1936, the Town and Country Planning Acts, 1932 and 1944, and the Local Government Act, 1933) shall be amended as follows:—

(1) In Rule 71 the words "or (5) The New Towns Act, 1946" shall be inserted after the words "Town and Country Planning Act, 1944."

(2) In Rule 73 the words "be dated as of the day of service and" shall be inserted after the words "the notice of motion shall".

(3) The following paragraphs shall be added to Rule 74:—

"(3) Any affidavit evidence in support of the application shall be filed by the applicant in the Crown office within 14 days from the date of the service of the notice of motion and the applicant shall, at the time of filing, give notice thereof to the respondent and of his intention to use such affidavit in support of the motion.

(4) Any affidavit evidence in opposition to the application shall be filed by the respondent in the Crown office within 21 days from the date of his receiving a notice of filing of the applicant's affidavit and the respondent shall, at the time of filing, give notice thereof to the applicant and of his intention to use such affidavit in opposition to the motion.

(5) Either party shall, upon application being made therefor, furnish a copy of such affidavits and exhibits, if any, to the other party, upon payment of the proper charges.

(6) The party filing an affidavit in support or in opposition shall lodge in the Crown office, for the use of the Court, one copy of such affidavit, together with copies of the documents exhibited to the original.

(7) The application shall not, unless otherwise ordered by the Court, be in the list for hearing until fourteen days after the time for filing the affidavit by the respondent has expired."

3. The following Rule shall be added to Order XVI (which relates to parties) and shall stand as Rule 17A.

"17A. Nothing in Rule 16 or 17 of this Order shall prevent a married woman acting as next friend or guardian."

4. These Rules may be cited as the Rules of the Supreme Court (No. 2), 1947.

Dated this 18th day of March, 1947.

Jowitt, C.

We concur, *Goddard*, C.J.
Greene, M.R.

* 2 & 3 Geo. 6, c. 78. † 15 & 16 Geo. 5, c. 49. ‡ 9 & 10 Geo. 6, c. 59.

OBITUARY

MR. H. M. BROUGHTON

Mr. Herbert Montagu Broughton, barrister-at-law, of Sussex Gardens, W.2, and Stone Buildings, Lincoln's Inn, died on Tuesday, 18th March, aged eighty-seven. He was the oldest practising conveyancer in Lincoln's Inn and was still practising until very shortly before his death. He was a valued contributor of occasional articles to this journal.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 490. **Acquisition of Land** (Owner-Occupier) (Scotland) Regulations. March 17.
No. 468. **Administration of Justice** (Emergency Provisions) (Scotland) Act (Expiry) Order. March 10.
No. 479. **Aliens** (Approved Ports) Order. March 18.
No. 489. **Approved Schools** (Contributions) (Scotland) Regulations. March 17.
No. 500. **Atomic Energy** (Assessment of Compensation for Work done in Searching for Minerals) Rules. March 17.
No. 492. **Bankruptcy** (Shorthand Writers' Fees) Rules. March 17.
No. 485. **Cultivation of Lands** (Amendment) Order. March 18.
No. 505. Cultivation of Lands (Scotland) Order. March 21.
No. 483. **Designs Rules.** March 17.
No. 484. **Patents Rules.** March 17.
No. 486. **Rules of the Supreme Court** (No. 2). March 18.

COMMAND PAPERS (SESSION 1946–47)

No. 7067. **Commissioners of Inland Revenue,** 89th Report, for 1945–46.

NOTES AND NEWS

Honours and Appointments

The King has appointed LORD BLADES to be Lord Ordinary in Exchequer causes in Scotland.

Mr. R. M. Lowe, C.B., will retire from the office of Chief Land Registrar on 1st June. The Lord Chancellor has appointed Mr. GEORGE HAROLD CURTIS to succeed Mr. Lowe on that date as Chief Land Registrar.

The following appointments are announced in the Colonial Legal Service: Mr. W. L. BATE to be Crown Counsel, Nigeria;

Mr. E. G. BATES to be Resident Magistrate, Northern Rhodesia; Mr. H. A. DE B. BOTHELO to be Assistant Crown Solicitor, Hong Kong; Mr. J. G. CONKLIN to be Magistrate, Hong Kong; Mr. R. J. QUIN to be Assistant Legal Secretary, British Somaliland.

Professional Announcement

Mr. C. B. LOCOCK, practising as Messrs. FEARON & Co., of 11 Victoria Street, Westminster and Woking, Surrey, has from the 1st April, 1947, taken into partnership Mr. JOHN R. FEARON. The name and addresses of the firm remain unchanged.

Notes

With the setting up on 24th March of the seventy-seventh rent tribunal, all local authorities in England and Wales which have asked for tribunals are now covered. There are seventy-two tribunals in England and five in Wales. Below are details of the seventy-seventh tribunal:

St. Helens, Warrington, Wigan, Lymm, Prescot, Skelmersdale, and the rural district of Warrington. Chairman, Mr. J. Houghton; Member and Reserve Chairman, Mr. N. Birch; Reserve Members, Mr. J. P. Preston, Mr. D. L. Unsworth; Assistant Clerk, Mr. S. W. Boast; Office, Westminster Bank Chambers, Hardshaw Street, St. Helens.

The following have been added to the areas of tribunals already set up: *Reading*, the rural district of Wokingham; *Wolverhampton*, Coseley and the rural district of Seisdon; *Blackpool*, Thornton Cleveleys; *Coventry*, Tamworth; *Lincoln*, the rural district of North Kesteven; *Huddersfield*, Stanby; *Barnsley*, Adwick-le-Street; *Bedford*, Leighton Buzzard; *Exeter*, the rural districts of St. Thomas and Totnes; *Southend*, Billericay; *Folkestone*, New Romney; *Portsmouth*, the rural district of Winchester; *Colchester*, Clacton; *Penrith*, the rural district of South Westmorland; *Leeds*, Horsforth.

The Minister for Justice in Eire has fixed 14th April as the day for the coming into operation of Pt. II of the Courts of Justice (District Court) Act, 1946, which provides for the more convenient dispatch of district court business in the Dublin Metropolitan area. From that date, Dublin Metropolitan Justices will be grouped into three divisions, Civil and Juvenile Division, Summary Division and Custody Division, each consisting of a Principal Justice and a number of Ordinary Justices. The Principal Justices have already been appointed and the Ordinary Justices, who will preside in the different Divisions, will be nominated by the Minister for Justice from among the Dublin Metropolitan Justices. Under the Act the remuneration of the justices is: Principal Justice, £1,200, other Dublin Metropolitan Justices, £1,000.

THE LAW SOCIETY

REFRESHER COURSES

A part-time refresher course (B.10) will start on Monday, the 21st April, and end on Friday, the 27th June. There will be no lectures during Whitsun week (26th to 30th May). The lectures will be from 5 p.m. to 6.30 p.m. each evening from Monday to Friday.

It is unlikely that any further refresher courses will be offered so that this will be the last chance for those who wish to take one.

Solicitors are accordingly asked to bring this announcement to the attention of any of their partners or assistant solicitors who are still engaged in national service and who may be interested in it.

Entry forms can be obtained from the Society's offices.

Wills and Bequests

Mr. H. M. Hubbard, solicitor, of Hove, left £502,137. He left £1,000 to St. Mary's Hospital, Paddington, for the upkeep of a bed in memory of his wife, mother and father; £500 to the R.S.P.C.A., as to £200 for general purposes and £300 "for supporting any steps to prevent animals being used as performing animals"; £500 to Brompton Hospital for Consumption; and £1,000 upon trust, £500 to provide an annual prize, for universal history for pupils of the Merchant Taylors' School.

Mr. Harold McKenna, Metropolitan magistrate, left £19,831, with net personalty £18,130.

Mr. A. Tyrer, solicitor, of Upton, Cheshire, left £244,790, with net personalty £242,290.

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price Mar 31 1947	Flat Interest Yield	‡ Approximate Yield with redemption
British Government Securities			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	113	3 10 10	2 8 11
Consols 2½%	JAJO	94½	2 12 11	—
War Loan 3% 1955–59	AO	105	2 17 2	2 6 2
War Loan 3½% 1952 or after	JD	106	3 6 0	2 6 2
Funding 4% Loan 1960–90	MN	116xd	3 9 0	2 10 10
Funding 3% Loan 1959–69	AO	105	2 17 2	2 10 3
Funding 2¾% Loan 1952–57	JD	104	2 12 11	1 17 10
Funding 2½% Loan 1956–61	AO	102	2 9 0	2 5 0
Victory 4% Loan Av. life 18 years	MS	118	3 7 10	2 14 5
Conversion 3½% Loan 1961 or after	AO	110	3 3 8	2 12 9
National Defence Loan 3% 1954–58	JJ	105	2 17 2	2 3 2
National War Bonds 2½% 1952–54	MS	102⅜	2 8 8	1 19 8
Savings Bonds 3% 1955–65	FA	105½	2 16 10	2 4 9
Savings Bonds 3% 1960–70	MS	105½	2 16 10	2 10 0
Treasury 3%, 1966 or after	AO	104½	2 17 5	2 13 10
Treasury 2½%, 1975 or after	AO	95½	2 12 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	101	2 19 5	—
Guaranteed 2¾% Stock (Irish Land Act, 1903)	JJ	101	2 14 5	—
Redemption 3% 1986–96	AO	110	2 14 7	2 11 9
Sudan 4½% 1939–73 Av. life 16 years	FA	122⅛	3 13 6	2 14 10
Sudan 4% 1974 Red. in part after 1950	MN	117	3 8 5	—
Tanganyika 4% Guaranteed 1951–71	FA	105	3 16 2	2 13 4
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	101½	2 9 3	2 0 0
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	110	3 12 9	2 10 6
Australia (Commonw'h) 3½% 1964–74	JJ	108½	2 19 11	2 12 6
*Australia (Commonw'h) 3% 1955–58	AO	103	2 18 3	2 11 7
†Nigeria 4% 1963	AO	118½	3 7 6	2 12 8
*Queensland 3½% 1950–70	JJ	104	3 7 4	—
Southern Rhodesia 3½% 1961–66	JJ	110½	3 3 4	2 11 11
Trinidad 3% 1965–70	AO	106	2 16 7	2 11 7
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	100½	2 19 8	—
*Leeds 3½% 1958–62	JJ	107	3 0 9	2 10 2
*Liverpool 3% 1954–64	MN	104	2 17 8	2 7 4
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	122⅛	2 17 2	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	100⅛	2 19 8	—
*London County 3½% 1954–59	FA	108	3 4 10	2 6 7
*Manchester 3% 1941 or after	FA	100	3 0 0	—
*Manchester 3% 1958–63	AO	105	2 17 2	2 8 7
Met. Water Board "A" 1963–2003	AO	103½	2 18 0	2 14 7
* Do. do. 3% "B" 1934–2003	MS	101	2 19 5	—
* Do. do. 3% "E" 1953–73	JJ	105	2 17 2	2 2 1
Middlesex C.C. 3% 1961–66	MS	106	2 16 7	2 9 10
*Newcastle 3% Consolidated 1957	MS	105	2 17 2	2 8 7
Nottingham 3% Irredeemable	MN	108	2 15 7	—
Sheffield Corporation 3½% 1968	JJ	115	3 0 10	2 11 4
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	123½	3 4 9	—
Gt. Western Rly. 4½% Debenture	JJ	125½	3 11 9	—
Gt. Western Rly. 5% Debenture	JJ	137½	3 12 9	—
Gt. Western Rly. 5% Rent Charge	FA	134½	3 14 4	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	131½	3 16 1	—
Gt. Western Rly. 5% Preference	MA	119½	4 3 8	—

* Not available to Trustees over par.
† Not available to Trustees over 115.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated the earliest date in the case of other Stocks, as at the latest date.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices: 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: Inland, £3; Overseas, £3 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

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